# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

## No. 569.

REUBEN QUICK BEAR, RALPH EAGLE FEATHER, CHARLES TACKETT, ON BEHALF OF THEMSELVES AND ALL OTHER MEMBERS OF THE SIOUX TRIBE OF INDIANS OF THE ROSEBUD AGENCY, [illegible], APPELLANTS,

vs.

FRANCIS E. LEUPP, COMMISSIONER OF INDIAN AFFAIRS; SECRETARY OF THE INTERIOR, [illegible], SECRETARY OF THE TREASURY, ET AL.

(20,972.)

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*vs.*

FRANCIS E. LEUPP, COMMISSIONER OF INDIAN AFFAIRS; JAMES RUDOLPH GARFIELD, SECRETARY OF THE INTERIOR; GEORGE BRUCE CORTELYOU, SECRETARY OF THE TREASURY, ET AL.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

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# In the Court of Appeals of the District of Columbia.

No. 1786.

REUBEN QUICK BEAR ET AL., Appellants,
*vs.*
FRANCIS E. LEUPP, Commissioner of Indian Affairs, *et al.*,

and

No. 1787.

FRANCIS E. LEUPP, Commissioner of Indian Affairs, *et al.*, Appellants,
*vs.*
REUBEN QUICK BEAR ET AL.

a Supreme Court of the District of Columbia.

In Equity. No. 26271.

REUBEN QUICK BEAR, RALPH EAGLE FEATHER, and CHARLES TACKETT, on Behalf of Themselves and All Other Members of the Sioux Tribe of Indians of the Rosebud Agency, S. D., Complainants,

*vs.*

FRANCIS E. LEUPP, Commissioner of Indian Affairs; ETHAN ALLEN HITCHCOCK, Secretary of the Interior; LESLIE M. SHAW, Secretary of the Treasury; CHARLES H. TREAT, Treasurer of the United States, and ROBERT J. TRACEWELL, Comptroller of the Treasury, Defendants.

UNITED STATES OF AMERICA,
*District of Columbia, ss:*

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

BILL IN EQUITY
Filed May 11, 1906.

# In the Supreme Court of the District of Columbia.

The 11th day of May, 1906.

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REUBEN QUICK BEAR, RALPH EAGLE FEATHER and CHARLES TACKETT, on behalf of themselves and all other members of the Sioux Tribe of Indians of the Rosebud Agency, S. D., *Plaintiffs*

*vs.*

FRANCIS E. LEUPP, Commissioner of Indian Affairs, ETHAN ALLEN HITCHCOCK, Secretary of the Interior, LESLIE M. SHAW, Secretary of the Treasury, CHARLES H. TREAT, Treasurer of the United States, and ROBERT J. TRACEWELL, Comptroller of the Treasury, *Defendants.*

No. 26271

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*To the Supreme Court of the District of Columbia holding an Equity Court.*

The plaintiffs state as follows :

1. The plaintiffs are citizens of the United States, and members of the Sioux tribe of Indians of the Rosebud Agency, in the State of South Dakota, and bring this suit in their own right as well as for all other members of the Sioux tribe of Indians of the Rosebud Agency.

2. The defendants are citizens of the United States and residents of the District of Columbia, and are sued in this action as the Commissioner of Indian affairs, the Secretary of the Interior, the Secretary of the Treasury, the Treasurer of the United States, and the Comptroller of the Treasury respectively.

3. That by article VII of the Sioux treaty of April 29, 1868 (15 Stats., 635, 637), continued in force for twenty years after July 1, 1889, by section 17 of the Act of March 2, 1889 (25 Stats., 858, 894–5), the United States agreed that for every thirty children of the said Sioux tribe who can be induced or compelled to attend school, a house shall be provided, and a teacher competent to teach the elementary branches of an English education, shall be furnished, who will reside among said Indians and faithfully discharge his or her duties as a teacher.

4. That for the purpose of carrying out the above provision of the said treaty during the fiscal year ending June 30, 1906, the following appropriation was made by the Act of March 3, 1905, section 1 (33 Stats., 1048, 1055):

> For support and maintenance of day and industrial schools, including erection and repairs of school buildings in accordance with article seven of the treaty of April twenty-ninth, eighteen hundred and sixty-eight, which article is continued in force for twenty years by section seventeen of the Act of March second, eighteen hundred and eighty-nine, two hundred and twenty-five thousand dollars.

The fund so appropriated is generally known as the Sioux treaty fund.

5. That section 17 of the said Act of March 2, 1889, further provides as follows:

> And in addition thereto there shall be set apart out of any money in the Treasury not otherwise appropriated, the sum of three million dollars, which said sum shall be deposited in the Treasury of the United States to the credit of the Sioux Nation of Indians as a permanent fund, the interest of which, at five per centum per annum, shall be appropriated, under the direction of the Secretary of the Interior to the use of the Indians receiving rations and annuities upon the reservations created by this act, in proportion to the numbers that shall so receive rations and annuities at the time that this act takes effect, as follows: one half of said interest shall be so expended for the promotion of industrial and other suitable education among said Indians, and the other half thereof in such manner and for such purposes, including reasonable cash payments per capita as, in the judgment of said Secretary, shall, from time to time, most contribute to the advancement of said Indians in civilization and self-support.

This fund of three million dollars is generally known as the Sioux trust fund.

6. That the interest on the said Sioux trust fund is paid annually by the United States in accordance with the provisions of the second clause of the Act of April 1, 1880 (21 Stats., 70), reading as follows:

> And the United States shall pay interest semi-annually, from the date of the deposit of any and all such sums in the United States Treasury, at the rate per annum stipulated by treaties or pre-

> scribed by law, and such payments shall be made in the usual manner, as each may become due, without further appropriation by Congress.

7. That the Act of June 7, 1897, section 1 (30 Stats., 62, 79), contains the following provision :

> And it is hereby declared to be the settled policy of the Government to hereafter make no appropriation whatever for education in any sectarian school.

8. That, in violation of the said provision of the Act of June 7, 1897, the said Francis E. Leupp, Commissioner of Indian Affairs as aforesaid, has made or intends to make, for and on behalf of the United States, a contract with the Bureau of Catholic Indian Missions of Washington, D. C., a sectarian organization, for the care, education, and maintenance, during the fiscal year ending June 30, 1906, of a number of Indian pupils of the said Sioux tribe, at a sectarian school on the said Rosebud Reservation, known as the St. Francis Mission Boarding School, and in the said contract has agreed to pay or intends to agree to pay to the said Bureau of Catholic Indian Missions of Washington, D. C., a certain rate per quarter as compensation for every pupil in attendance at the said school under the said contract, the said payment (which, as the plaintiffs are informed and believe, will amount to the sum of Twenty-seven thousand dollars), to be made either from the said Sioux treaty fund or from the interest of the said Sioux trust fund or from both.

9. That all payments made to the said Bureau of Catholic Indian Missions of Washington, D. C., under the

said contract, either out of the said Sioux treaty fund or out of the interest of the said Sioux trust fund will be payments for education in a sectarian school, and will be unlawful diversions of funds appropriated by Congress, and in violation of the above recited provision of the Act of June 7, 1897, and such payments will seriously deplete the interest of the said Sioux trust fund, to the great injury of the plaintiffs and all other members of the said Sioux tribe of Indians of the Rosebud Agency, and will unlawfully diminish the amount of money which should be expended out of the said Sioux treaty fund and the interest of the said Sioux trust fund for lawful purposes, for the benefit of the said plaintiffs and all other members of the said Sioux tribe of Indians of the Rosebud Agency, and will also unlawfully diminish the cash payments which the said plaintiffs and all other members of the said Sioux tribe of Indians of the Rosebud Agency are entitled to receive per capita out of the interest of the said Sioux trust fund.

10. That the plaintiffs have never requested nor authorized the payment of any part of the said Sioux treaty fund, or of the interest of the said Sioux trust fund, to the said Bureau of Catholic Indian Missions of Washington, D. C., or any other person or organization whatever, for the education of Indian pupils of the said Sioux tribe in the said St. Francis Mission Boarding School, or any other sectarian school whatever, but have on the contrary protested against any use of either of the said funds, or the interest of the same, for the purpose of such education.

11. That the plaintiffs have no remedy at law.

Wherefore the plaintiffs ask relief, as follows :

I. That a permanent injunction issue against the said Francis E. Leupp, Commissioner of Indian Affairs, to restrain him from executing any contract with the said Bureau of Catholic Indian Missions of Washington, D. C., or any other sectarian organization whatever, for the support, education or maintenance of any Indian pupils of the said Sioux tribe at the said St. Francis Mission Boarding School, or any other sectarian school on the said Rosebud Reservation or elsewhere, and that a permanent injunction issue against the said Francis E. Leupp, Commissioner of Indian Affairs, and the said Ethan Allen Hitchcock, Secretary of the Interior, to restrain them from paying or authorizing the payment of, either by themselves or by any of their subordinate officers or agents whatever, any moneys of either the said Sioux treaty fund or the interest of the said Sioux trust fund, or any other fund appropriated, either by permanent appropriation or otherwise, for the uses of the said Sioux tribe, to the said Bureau of Catholic Indian Missions, of Washington, D. C., or to any other sectarian organization whatever, for the support, education, or maintenance of any Indian pupils of the said Sioux tribe, at the said St. Francis Mission Boarding School or any other sectarian school on the said Rosebud Reservation or elsewhere.

II. That a permanent injunction issue against the said Leslie M. Shaw, Secretary of the Treasury, the said Charles H. Treat, Treasurer of the United States, and the said Robert J. Tracewell, Comptroller of the Treasury, to restrain the said Leslie M. Shaw from drawing, and

the said Robert J. Tracewell from countersigning, and the said Charles H. Treat from paying any warrants in favor of the said Bureau of Catholic Indian Missions, of Washington, D. C., or any other sectarian organization whatever, for the support, education, and maintenance of any Indian pupils of the said Sioux tribe, at the said St. Francis Mission Boarding School, or any other sectarian school on the said Rosebud Reservation or elsewhere, payable out of any money appropriated, either by permanent appropriation or otherwise, for the uses of the said Sioux tribe.

III. General relief.

SAMUEL M. BROSIUS,
*Solicitor for Plaintiffs.*

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STATE OF SOUTH DAKOTA, }
*County of Meyer,* } *ss:*

Personally appeared before me, a notary public in and for Meyer County, these three, Reuben Quick Bear, Ralph Eagle Feather, and Charles Tackett, who after being duly sworn state that the facts set forth in the foregoing bill from personal knowledge are true, and those stated upon information and belief they believe to be true.

REUBEN QUICK BEAR,
RALPH EAGLE FEATHER,
CHARLES TACKETT.

Sworn and subscribed to before me, a notary public, this seventh day of May, 1906.

J. A. ANDERSON,
*Notary Public.*

[SEAL]

[J. A. Anderson, Notary Public, South Dakota.]

*My commission as notary public expires 1910.*

IN THE
SUPREME COURT OF THE DISTRICT OF COLUMBIA.

| | |
|---|---|
| REUBEN QUICK BEAR,<br>RALPH EAGLE FEATHER AND<br>CHARLES TACKETT,<br>*Plaintiffs*<br>*vs.*<br>FRANCIS E. LEUPP, Commissioner Indian Affairs,<br>ETHAN ALLEN HITCHCOCK, Secretary of the Interior,<br>LESLIE M. SHAW, Secretary of the Treasury,<br>ROBERT J. TRACEWELL, Comptroller of the Treasury,<br>CHARLES H. TREAT, Treasurer United States,<br>*Defendants.* | Number<br>Docket<br>**In Equity.** |

*Affidavit of Reuben Quick Bear, Ralph Eagle Feather and Charles Tackett.*

STATE OF SOUTH DAKOTA, } *ss:*
*County of Meyer,* }

Reuben Quick Bear, Ralph Eagle Feather and Charles Tackett, plaintiffs in the above-entitled cause, being duly sworn, depose and say: That neither they nor any of them have given permission or authority to any officer of the United States, or to any other person to use or expend any portion of the treaty funds, trust funds or other moneys now due or that may hereafter become due and placed to the credit of the Rosebud Band of Sioux Indians, in the State of South Dakota, in the Treasury of the United States, for the maintenance or support of any sectarian or denominational school, or any school excepting only such schools as are maintained and conducted by the United States.

The affiants have been informed and believe the fact to be that it is the intention of the officers of the United States to divert and use a portion of the funds that may be due the Rosebud tribe of Indians as herein mentioned for sectarian or denominational schools, petitions purporting to grant the power to make such use of these funds having been circulated among and signed by a minority of the membership of the said tribe of Indians. The affiants further assert that they believe the fact to be that over three-fourths of the members of said Indian tribe are opposed to having any portion of their said funds used for the support or maintenance of any school excepting those which are altogether and wholly maintained and controlled by the United States, and that a protest against such use of their funds has been filed in the office of the Commissioner of Indian Affairs, signed by these affiants and nine hundred and eighteen other adult members of the Rosebud tribe of Sioux Indians to which these affiants belong.

These affiants further state that they have heard read the bill filed in the above-entitled cause, and know the contents thereof, and that the facts therein stated upon personal knowledge are true, and those stated upon information and belief they believe to be true.

REUBEN QUICK BEAR,
RALPH EAGLE FEATHER,
CHARLES TACKETT.

Sworn and subscribed to before me, a notary public, this seventh day of May, 1906.

J. A. ANDERSON,
*Notary Public.*

[J. A. Anderson, Notary Public,
South Dakota.]

*My commission as notary public expires 1910.*

10 *Answer.*

Filed December 21, 1906.

In the Supreme Court of the District of Columbia.

No. 26271.

REUBEN QUICKBEAR, RALPH EAGLE FEATHER, and CHARLES TALKETT, on Behalf of Themselves and of Other Members of the Sioux Tribe of Indians of the Rosebud Reservation Agency, Plaintiffs,

*vs.*

F. E. LEUPP, Commissioner of Indian Affairs; E. A. HITCHCOCK, Secretary of the Interior; LESLIE M. SHAW, Secretary of the Treasury; CHARLES H. TREAT, Treasurer of the United States, and ROBERT J. TRACEWELL, Comptroller of the Treasury, Defendants.

The defendants, by way of answer to the bill heretofore filed against them by the plaintiffs, state as follows:

1. The defendants admit that the plaintiffs are citizens of the United States, and members of the Sioux tribe of Indians, but aver that the said Indians are only nominal plaintiffs, the real plaintiff being the Indian Rights Association, who have had this suit brought for the purpose of testing the validity of the contract hereinafter referred to.

2. The defendants admit that they are residents of the District of Columbia, and are *used* in this action as Commissioner of Indian Affairs, the Secretary of the Interior, the Secretary of the Treasury, the Treasurer of the United States, and the Comptroller of the Treasury, respectively. These defendants, as officers of the Government of the United States, have no interest in the controversy raised by the bill, except to perform their duties under the law, and they, therefore, as such officers, respectfully submit the validity of the contract hereinafter referred to, and the payments there-
11 under, to the judgment of this honorable court. The real defendant in interest is the "Bureau of Catholic Indian Missions," a corporation duly incorporated by chapter 363 of the acts of Assembly of Maryland for the year 1894, for the object, *inter alia*, of educating the American Indian directly and also indirectly by training their teachers and others, especially to train their youth to become self-sustaining men and women, using such methods of instruction in the principles of religion and of human knowledge as may be best adapted to these purposes.

As the object of the bill filed is to test the validity of a contract made between the Commissioner for Indian Affairs and the said "Bureau of Catholic Indian Missions," and the validity of the payment of the money thereunder, this answer will set forth the facts and the statutes of the United States under which it is contended that such contract and the payment of money thereunder are valid.

3. These defendants admit the allegations of paragraph 3 of the bill, but the pertinent part of the Sioux Treaty of April 29, 1868, is only partially stated therein. The full statement of that part of the Sioux treaty will be hereinafter made.

4. These defendants admit the allegations of paragraph 4 of the bill.

5. These defendants admit the allegations in paragraph 5 of the bill, but aver that though the provision from section 17 of the act of March 2, 1889, is correctly stated, as far as it goes, there are other portions of said act which should be called to the attention of the court, which is accordingly done hereafter in this answer.

6. These defendants admit the allegations in paragraph 6 of the bill, but aver, that although clause 2 of the act of April, 1880, is correctly stated, as far as it goes, there are other provisions of law to be called to the attention of the court in this connection,
12 which is accordingly done in the subsequent part of this answer.

7. These defendants admit the allegations in paragraph 7 of the bill, but aver that, although the provisions in the act of June 7, 1897, sec. 1, is correctly stated as far as it goes, the section is not fully stated, nor are other parts of the act referred to which bear directly on the question raised by the bill.

8. These defendants admit that within the meaning of the acts of Congress the "Bureau of Catholic Indian Missions" is a sectarian organization, and the industrial school known as the "St. Francis Mission Boarding School," on the Rosebud Reservation, is a sectarian school.

These defendants further say that a contract was made by and between F. E. Leupp, Commissioner of Indian Affairs, for and on behalf of the United States of America, and the "Bureau of Catholic Indian Missions," for the care, education, and maintenance during the fiscal year ending June 30, 1906, of 250 Indian pupils of the Sioux tribe of Indians, at the industrial school known as St. Francis Mission Boarding School, on the Rosebud Reservation, and by such contract it was agreed that there should be paid to the "Bureau of Catholic Indian Missions" twenty-seven dollars ($27) per quarter for every pupil in attendance, provided there should not be paid under the contract a sum aggregating more than twenty-seven thousand dollars ($27,000). This amount, according to the contract, was to be paid from either or all of the funds of the Sioux tribe of Indians, designated technically as "Interest on Sioux Fund," "Education Sioux Nation," and "Support of Sioux of different tribes, subsistence, and civilization," all of which, however, are embraced in the two funds stated in the bill, to wit, the "Sioux Treaty Fund," described in paragraph 4 of the bill and the "Sioux Trust Fund," described in paragraph 5 of the bill.

13 This contract has been fully performed by the "Bureau of Catholic Indian Missions" and there is due to it thereunder from the said funds the total amount of twenty-seven thousand dol-

lars ($27,000) if the said contract was legally made. This contract was approved by the Acting Secretary of the Interior, Mr. Jesse E. Wilson, by direction of the President of the United States, but, by the same direction, no payments have been made under it in order that the validity of the contract might be determined by the courts of the United States. The circumstances under which this contract was entered into and approved are hereinafter more fully stated.

These defendants deny the allegation in paragraph 8 of the bill that this contract was made in violation of the act of June 7, 1897, or in violation of any other act of Congress.

9. These defendants admit that payments under this contract will be payments for education in a sectarian school, as the term "sectarian school" is defined in the acts of Congress, but they deny that said payments will be in violation of the act of June 7, 1897, and they further deny that such payments will deplete the interest of said "Sioux Trust Fund" to the injury of the plaintiffs and all other members of the said Sioux tribe of Indians of the Rosebud Agency; and they further deny that such payments will unlawfully diminish the amount of money which should be expended out of the said "Sioux Treaty Fund," and the interest of the "Sioux Trust Fund" for lawful purposes for the benefit of the plaintiffs and all other members of the said Sioux tribe of Indians of the Rosebud Agency; and they further deny that said payments will also unlawfully diminish the cash payments which the said plaintiffs and other members of the said Sioux tribe of Indians of the Rosebud Agency are entitled to receive *per capita* out of the interest of the said "Sioux Trust Fund" as alleged in paragraph 9 of said
14 bill; all of which will more fully and at large appear by the detailed statements in this answer hereinafter made.

10. These defendants admit that the plaintiffs, to wit, the three Indians whose names appear as plaintiffs in the caption of this bill, have never requested or authorized the payment of any part of the Sioux Treaty or Trust Fund to the said "Bureau of Catholic Indian Missions," or any other person or organization whatever for the education of Indian pupils of the said Sioux tribe in said "St. Francis Mission Boarding School," or any other sectarian boording school whatever, but on the contrary, these defendants admit that the said plaintiffs protest against any use of either of the said funds, or the interest of the same, for the purpose of such education, as stated in paragraph 10 of the bill.

11. But now these defendants further answering say, that although they have answered in terms all the allegations in all the paragraphs of the bill contained, it is necessary for a full understanding of the rights of the parties, that all the pertinent facts connected with the use of money under the contract of the United States for the education of the Indians in contract schools which are sectarian within the meaning of the acts of Congress, should be stated, so that in the light of all these facts, only a few of which are stated in the bill, the legality of the contract assailed may be judicially determined.

12. The Catholic Missions Schools were erected many years ago at the cost of charitable Catholics, and with the approval of the authorities of the Government of the United States, whose policy it was then to encourage the education and civilization of the Indians through the work of religious organizations. Under the provisions of the act of 1819, ten thousand dollars ($10,000) were appropriated for the purpose of extending financial help "to such associations or individuals who are already engaged in educating the Indians" as may be approved by the War Department.

In 1820, twenty-one schools conducted by different religious societies were given eleven thousand, eight hundred and thirty-eight dollars ($11,838), and from that date until 1870, the principal educational work in relation to the Indians was under the auspices of these bodies, aided more or less by the Government. For a long time the different denominational schools referred to were aided by the Government without any formal contract.

In 1870, an act of Congress was passed appropriating one hundred thousand dollars ($100,000) for the support of Indian schools among Indian tribes not otherwise provided for, *i. e.*, among tribes not having treaty stipulations providing funds for educational purposes, and these appropriations continued until 1876. Contracts were made annually with the mission schools of the different denominations payable out of this appropriation for the education of Indian pupils. As to the tribes having funds for educational purposes under treaty stipulations, contracts were also made with the mission schools of the different denominations payable out of the treaty funds. In 1876, Congress began the general appropriation "for the support of industrial schools and other educational purposes for the Indian tribes," and these annual appropriations from the public moneys of the United States have been — from that time until the present. These appropriations always were put in the appropriation acts under the heading "Support of Schools"—and from these public funds, and, in the discretion of the Commissioner of Indian Affairs, from the tribal funds hereinafter explained, were paid the amounts due under the contracts made by the Commissioner of Indian Affairs, with the approval of the Secretary of the Interior with the various denominational schools for the education of Indian pupils.

Some time before 1895 opposition developed to these contracts with denomination schools, on the ground that the public moneys of the United States raised by taxation should not be used for education in sectarian institutions; and also for other reasons.

Accordingly there is found in the Appropriation Act of 1894, ch. 290 (28 Statutes at Large, p. 311), approved August 15, 1894, in that part of the act appropriating the public moneys for the support of Indian schools and under the heading "Support of Schools," the following:

"That the expenditure of money appropriated for school purposes under this act shall be at all times under the supervision and direction of the Commissioner for Indian Affairs and in all respects

in conformity with such conditions, rules, and regulations as to the conduct of and methods of instruction and expenditure of money as may, from time to time, be prescribed by him, subject to the approval of the Secretary of the Interior.

"Provided, that the Secretary of the Interior is hereby directed to inquire into and investigate the propriety of discontinuing contract schools and whether, in his judgment, the same can be done without detriment to the education of Indian children, and that he submit to Congress, at the next session, the result of such investigation, including an estimate of the annual cost, if any, of substituting Government schools for contract schools, together with such recommendations as he may deem proper."

In his annual report for the fiscal year ending June 30, 1894, the Secretary of the Interior said:

"The contract schools are now the subject of general discussion.
I agree fully with those who oppose the use of public money
17 for the support of sectarian schools. But this question should
be considered practically. The schools have grown up. Money has been invested in their construction at a time when they were recognized as wise instrumentalities for the accomplishment of good. I do not think it proper to allow the intense feeling of opposition to sectarian education, which is showing itself all over the land, to induce the Department to disregard existing conditions. We need the schools now, or else we need a large appropriation to build schools to take their place.

"It would scarcely be just to abolish them entirely—to abandon instantly a policy so long recognized. My own suggestion is that they should be decreased at the rate of not less than 20% a year. Thus, in a few years more, they would cease to exist, and during this time the Bureau would be gradually prepared to do without them, while they might gather strength to continue without Government aid. This is the policy which is now controlling the Department, and, unless it is changed by legislation, it will be continued. The decrease in the appropriation for the present fiscal year is 20%."

Congress, in pursuance of this recommendation, introduced for the first time in the Appropriation Act of 1895, ch. 188 (28 Stat. at Large, 888), a limitation on the use of public money in sectarian schools.

The act appropriates, under the heading "Support of Schools," of the public moneys of the United States "for the support of Indian day and industrial schools and for other purposes" . . . $1,164,350."

. . . .

"Provided, that the Secretary of the Interior shall make contracts, but only with the present contract schools, for the education of Indian pupils during the fiscal year ending June 30th, 1896, to an
extent not exceeding 80% of the amount so used in the fiscal
18 year 1895, and the Government shall, as early as practicable,
make provision for the education of Indians in Government schools."

(See 28 Stat. at Large, p. 903.)

Congress, in the Indian Appropriation Act of 1896, ch. 398, appropriated from the public moneys of the United States, under the head "Support of Schools," "for support of Indian day and industrial schools and for other educational purposes," . . . $1,235,000." . . . and then as a qualification upon the appropriation, and following immediately thereupon, under the same heading, "Support of Schools," occurs the following language in the act:

"And it is hereby declared to be the settled policy of the Government to hereafter make no appropriation whatever for education in any sectarian school. Provided, that the Secretary of the Interior may make contracts with contract schools and apportioning, as near as may be, the amount so contracted for among schools of various denominations for the education of Indian pupils during the fiscal year 1897, but shall only make such contracts at places where nonsectarian schools can not be provided for such Indian children, and to an amount not exceeding 50% of the amount so used for the fiscal year 1895."

(See 29 Stat. at Large, p. 345.)

Congress, in the Indian Appropriation Act of 1897, ch. 3, appropriated from the public moneys of the United States, under the head of "Support of Schools," "for support of Indian day and industrial schools, and for other educational purposes . . . $1,200,000 . . ." and then as a qualification upon this appropriation, and following immediately thereupon, under the same heading, "Support of Schools," occurs the following language:

"And it is hereby declared to be the settled policy of the Government to hereafter make no appropriation whatever for edu-
19 cation in any sectarian school. Provided, the Secretary of the Interior may make contracts with contract schools, apportioning as near as may be the amount so contracted for among schools of various denominations for the education of Indian pupils during the fiscal year 1898, but shall only make such contracts at places where nonsectarian schools can not be provided for such Indian children, and to an amount not exceeding 40% of the amount so used for the fiscal year 1895."

(See 30 Stat. at Large, p. 79.)

Congress, in the Indian Appropriation Act of 1898, ch. 545, appropriated from the public moneys of the United States, under the head of "Support of Schools" "for support of Indian day and industrial schools, and for other educational purposes, . . . $1,100,000 . . . Provided, that the Secretary of the Interior, may make contracts with contract schools apportioning as near as may be the amount so contracted for among schools of various denominations for the education of Indian pupils during the fiscal year of 1899, but shall only make such contracts at such places were nonsectarian schools can not be provided for such Indian children, and to an amount not exceeding 30% of the amount so used for the fiscal year 1895."

(See 30 Stat. at Large, p. 587.)

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Congress, in the Indian Appropriation Act of 1899, ch. 324, appropriated from the public moneys of the United States, under the head of "Support of Schools," "for support of Indian day and industrial schools, and for other educational purposes, . . . $1,100,000, . . . Provided, that the Secretary of the Interior may make contracts with contract schools, apportioning as near as may be the amount so contracted for among schools of various denominations for the education of Indian pupils during the fiscal year 1900, but shall only make such contracts at places where nonsectarian schools can not be provided for such Indian children, and to an amount not exceeding 15% of the amount so used for the fiscal year 1895, the same to be divided proportionately among the said several contract schools, this being the final appropriation for sectarian schools."

**(30 Stat. at Large, p. 942.)**

The several Indian annual Appropriation Acts since 1899, to wit, beginning with 1900 to the present time, contain under the head of "Support of Schools" simply a general appropriation of public moneys "for the support of Indian and industrial schools, and for other educational purposes," without any proviso in any of them respecting contracts with sectarian schools, or without any statement in any of them of the policy of the Government with respect to the sectarian schools.

It will be observed that the phrase, "and it is hereby declared to be the settled policy of the Government to hereafter make no appropriation whatever for education in any sectarian school," which is cited and relied on in paragraph 7 of the bill, is found only in the Indian Appropriation Acts of 1896 and 1897, and in no prior or subsequent acts of Congress; that in these two acts it is a limitation on the appropriation of public moneys, and is found only under the heading "Support of Schools," under which the public money of the United States is appropriated for support of Indian schools, and does not occur in any other part of these acts of Congress. These defendants, therefore, submit, that this statement of policy, in so far as it can now have any legal effect, was intended only to apply to appropriations of public moneys for education in sectarian schools, and inasmuch as the appropriation of public moneys for these purposes was being reduced from year to year by a percentage which would make the last appropriation to be for the fiscal year ending June 30, 1900, there was no necessity for repeating the phrase containing the policy of the Government in any acts after 1897. The cessation of the appropriation from the public moneys for education in the sectarian schools, was treated as the accomplishment of the purpose contained in the statement of the policy found in the acts of 1896 and 1897.

The above paragraph contains all the matter pertinent to the appropriation of public moneys for the support of education in sectarian schools. These appropriations ceased with the Indian Appropriation Act of 1899, have never been made since, nor is anyone asking that they should be made, or that any public moneys of the

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United States raised by taxation should be employed for such purposes.

13. But these defendants, further answering, say that entirely separate and apart from the public moneys, which, as stated in paragraph 12 of this answer, were appropriated until 1899 for education in sectarian schools, there are other funds known as "Tribal Funds" which may be applied for these purposes. These funds these defendants respectfully submit are not public moneys but really belong to the Indians themselves, and it is the purpose of this paragraph of this answer to give a general account of these funds, and a particular account of the "Tribal Funds" of the Sioux Indians which are directly in controversy in this case will be given in the next paragraph.

These "Tribal Funds" may be roughly grouped into two classes:

(*a*) Where cessions of land or other property have been made by the Indians, and in consideration thereof a certain sum of
22 money is deposited in the Treasury of the United States, which is used for the Indians in the discretion of the Secretary of the Interior. These are called "Trust Funds."

(*b*) Where cessions of land or other property have been made by the Indians under treaties, and in consideration therefor the Government of the United States has by treaty bound itself to furnish money for the civilization and education of the Indians. These are called "Treaty Funds."

Examples of these funds are as follows:

Menominee Fund: Interest, $7,651.96 per annum (Treaty of 1848, Art. 5, 9 Stat. at Large, 952).

Menominee Log Fund: Interest, $76,313.98 per annum (Act of March 22, 1882, 22 Stat. at Large, 30; Act of June 12, 1890, 26 Stat. at Large, 146).

Osage Fund: Interest, $416,371.95 per annum (Treaty 1865, Art. 2, 14 Stat. at Large, 687; Act July 15th, 1870, 16 Stat. at Large, 362; Act of June 16, 1880, 21 Stat. at Large, 292).

Osage Fund: Interest on $69,120, 5% (Treaty Jan. 2d, 1825, for educational purposes per Senate resolution, Jan. 9, 1838, 7th Stat. at Large, 242).

The yearly amounts provided for the Indians under treaties are annually appropriated in the Indian Appropriation Acts, not in that part of the act under the title "Support of Schools" which appropriated the public money of the United States, but under the heading "Fulfilling Treaty Stipulations with and support of Indian Tribes," for although formally appropriated the moneys are not regarded as the moneys of the United States, but moneys belonging to the Indians, due to them under treaties in consideration of their cession of lands and other rights.

But inasmuch as according to Indian custom, the property is held in common, and inasmuch as the Indians are regarded
23 as wards of the nation, the money is not distributed per capita, but is expended for them, and for their benefit and advantage, under the discretion of the Secretary of the Interior. For some of the laws conferring this discretion, see 14th Stat., 687;

16 Stat., 362; 21 Stat., 292; 22 Stat., 30; 25 Stat., 895; 26 Stat., 146, 344.

14. As to the "Sioux Funds" directly in controversy, the facts are as follows:

On March 2, 1889, the act of Congress of 1889, ch. 405, was approved. This was entitled "An Act to divide a portion of the reservation of the Sioux Nation of Indians in Dakota into separate reservations, and to secure the relinquishment of the Indian tribe to the remainder." Under this act, the Indians made certain cessions of land, and in partial consideration therefor it was provided in section 17 of the act as follows:

"And in addition thereto, there shall be set apart out of any sum in the Treasury not otherwise appropriated, the sum of three million dollars, which said sum shall be deposited in the Treasury of the United States to the credit of the Sioux Nation of Indians as a permanent fund, the interest on which at five per cent. per annum shall be appropriated under the direction of the Secretary of the Interior to the use of the Indians receiving rations and annuities upon the reservations created by this act in proportion to the number that shall so receive rations and annuities at the time that this takes effect, as follows: One-half of said interest shall be so expended for the promotion of industrial and other suitable education among the said Indians, and the other half for such purposes, including reasonable cash payments per capita, as in the discretion of such Secretary, shall, from time to time, most contribute to the advancement of said Indians in civilization and self-support."

25 Stat. at Large, 895.

24 This is the fund called the "Sioux Trust Fund" in the fifth paragraph of this bill.

The method of the payment of the interest on this fund was changed in 1880 by the act of 1880, chapter 41, as follows:

"The Secretary of the Interior be, and he is hereby authorized to deposit in the Treasury of the United States, any and all sums now held by him, or which may hereafter be received by him, as Secretary of the Interior and trustee of various Indian tribes, on account of the redemption of United States bonds or other stocks and securities belonging to the Indian Trust Fund, and all sums received on account of sales of Indian trust lands, and the sales of stocks lately purchased for temporary investment whenever he is of the opinion that the best interests of the Indians will be promoted by such deposits in lieu of investments, and the United States shall pay interest semi-annually from the date of deposit of any and all such sums in the United States Treasury, at the rate per annum stipulated by treaties, or prescribed by law, and such payments shall be made in the usual manner, as each may become due, without further appropriation by Congress"

This provision is partially cited in the bill in paragraph 6.

15. Under a treaty between the United States and different tribes of Sioux Indians made on April 29, 1868 (15 Stat. at Large, 635), these Indians made large cessions of land and other rights, and in

partial consideration therefor, the United States agreed with them as follows:

"Art. VII. In order to insure the civilization of the Indians entering into this treaty, the necessity of education is admitted, especially of those as are or may be settled on said agricultural reservations, and they, therefore, pledge themselves to compel their children, male and female, between the ages of six and sixteen years,
25 to attend school, and it is hereby made the duty of the agent for said Indians to see that this stipulation is strictly complied with, and the United States agrees that for every thirty children between said ages who can be induced or compelled to attend school, a house shall be provided and a teacher competent to teach the elementary branches of our English education shall be furnished who will reside among said Indians and faithfully discharge his or her duties as a teacher. This provision of this article to continue for not less than twenty years."

By the act of Congress of February 28, 1877, ch. 72 (19th Stat. at Large, 254–6), ratifying an agreement with bands of Sioux nation, in consideration of further land cessions, it was provided:

"In consideration of the foregoing cession of territory and rights and upon full compliance with each and every obligation assumed by the said Indians, the United States does agree to provide all necessary aid to assist the said Indians in the work of civilization to furnish to them schools and instructions in mechanical and agricultural arts as provided by the treaty of 1868."

By the seventeenth section of the act of 1889, ch. 405 (25th Stat., at Large, 894), it was provided—

"that the 7th article of the said treaty of April 29th, 1868, securing to said Indians the benefit of education, subject to such modifications as Congress shall deem most effective to secure said Indians equivalent benefits of such education, shall continue in force for twenty years from and after the act shall take effect."

By the act of 1905, ch. 1479 (33 Stat. at Large, p. 1048), entitled—

"An act making appropriations for current and contin-
26 gent expenses of the Indian Department and for fulfilling treaty stipulations with various Indians tribes for the fiscal year ending June 30th, 1906, and for other purposes"—

it was provided under the heading "Fulfilling Treaty Stipulations with and Support of Indian Tribes" as follows:

"For support of and maintenance of day and industrial schools, including erection and repairs of school buildings in accordance with art. 7 of the treaty of April 29th, 1868, which article was continued in force for twenty years by sect. 17 of the act of March 2, 1889, $225,000."

A similar appropriation has been annually made for many years back in the Indian Appropriation Acts.

This is the "Treaty Fund" in dispute, referred to in the 4th paragraph of the bill.

These defendants respectfully represent that this "Treaty Fund" does not differ from the "Trust Fund" in the main point that it is

money belonging to the Indians and not public money of the United States.

Both funds arise from cessions made by the Indians of lands and other rights. The one is a specific sum of which the United States is a trustee for the Indians; the other is an obligation payable in instalments under the agreement of a treaty.

These defendants, therefore, respectfully submit that as to both of these funds there is nothing to prevent the Secretary of the Interior from using them in his discretion, and especially from using them as the real owners thereof desire and request.

16. Prior to 1900, the sectarian schools were aided by appropriations from the public moneys, and in the discretion of the Secretary of the Interior, from the tribal funds just described.

27 In 1900, not only the public appropriations ceased, as has been heretofore shown, but all aid from the tribal funds also ceased, except as to the Osage Treaty and trust funds hereinbefore referred to. At the request of the Osage Indians, their treaty funds have been annually and uninterruptedly applied to the Catholic mission schools under annual contract with the Commissioner of Indian Affairs, approved by the Secretary of the Interior. With the exception of the Osage funds, no "Tribal Funds" were applied to education in denominational schools from 1900 to 1904.

In the meantime application was made to President McKinley by the "Bureau of Catholic Indian Missions" for the revocation of the "Browning Ruling" and the use of "Tribal Funds" for the education of the Catholic Indian children in Catholic schools.

On September 30, 1896, the then Commissioner of Indian Affairs, D. M. Browning, in answer to the question, "whether parents of Indian children have the right to decide where their children shall attend school," said:

"It is your duty first to build up and maintain the Government day schools as indicated in your letter, and the Indian parents have no right to designate which school their children shall attend."

This was the "Browning ruling." It was ordered abrogated by President McKinley in 1901, and some eight months after, to wit, January 17, 1902, it was formally abrogated by the Commissioner of Indian Affairs with the approval of the Secretary of the Interior.

The question of the use of the "Tribal Funds" was referred by President McKinley to the Secretary of the Interior, and by him to the Commissioner of Indian Affairs, who decided adversely to the appropriation on February 12, 1901.

28 17. On or about January 1, 1904, the matter of the application for the use of "Tribal Funds" for the education of Indian children in Mission Schools was brought to the attention of President Roosevelt by the "Bureau of Catholic Indian Missions," who urged that the Indians should be allowed to use their own money in educating their own children in the schools of their choice.

President Roosevelt took up the matter on January 22, 1904, at a meeting in the executive office of the White House at which were present the Attorney-General (Mr. Knox) and Mr. Russell, of the

Department of Justice, and Secretaries Hitchcock, Cortelyou and Wilson, and Postmaster-General Payne. The President was legally advised that, notwithstanding the declaration of Congressional intent not to make appropriations in the future of public moneys of the American people for sectarian institutions, the previous laws giving the Secretary of the Interior discretion to use certain moneys of the Indians held in trust in any way that he might see fit, including assistance to sectarian schools, were not repealed, and consequently his discretion remained.

The President decided that inasmuch as the legal authority existed to grant the request of the Indians, they were entitled as a matter of moral right to have the moneys coming to them used for the education of their children at the schools of their choice.

A full and detailed statement of the action of the President in 1904 is set forth in his letter of February 3, 1905, which, with its enclosure, is herein set out at length:

"THE WHITE HOUSE,
WASHINGTON, *February* 3, 1905.

The Secretary of the Interior:

I have received from you the letter of the Commissioner of Indian Affairs, of January 31, 1905, in relation to the inquiries of the Hon. James S. Sherman as to the authority for granting contracts
29 for education of Indians in denominational schools. This letter of the Commissioner of Indian Affairs asks that the general questions raised in Mr. Sherman's letter of January 23rd be united with the special question raised by the Commissioner in his letter of January 21st and presented to the President for submission to the Attorney-General.

The letter of January 21st, concerning the payment of a claim filed in the Office of Insular Affairs in connection with the contract with St. Labre School, on the Tongue River Reservation, stands by itself and will be submitted to the Attorney-General for his consideration and report.

As regards the general question, I have received from the Attorney-General, under date of February 2, a letter, a copy of which is enclosed. Early in 1902 petitions on behalf of various Catholic and Episcopal schools were brought to my attention by certain ecclesiastics and laymen, who requested the Interior Department to distribute the rations and annuities through the mission schools of their several churches when the children were in the care of those schools. The Attorney-General decided that this request was illegal and could not properly be granted. Over a year afterwards the request was made, originally on behalf of certain Catholic schools in 1903, also on behalf of a Lutheran school in 1904, that where there were Indian moneys held in trust for the Indians by the Secretary of the Interior, the interest on these Indian moneys being distributed among the individual Indians or in such other ways as the Secretary of the Interior might direct, and where certain of the Indians petitioned that the moneys so distributed to them should be used for the support of the particular denominational school which they

desired their children to attend, this petition should be granted. The question raised was of course wholly different from that originally raised on behalf of the Episcopal Church and of the Catholic Church.

This new request was submitted to the Department of
30 Justice, and the Department decided, as set forth in the accompanying report, that the prohibition of the law as to the use of public moneys for sectarian schools did not extend to moneys belonging to the Indians themselves, and not to the public, and that these moneys belonging to the Indians themselves might be applied in accordance with the desire of the Indians for the support of the schools to which they were sending their children. There was, in my judgment, no question that, inasmuch as the legal authority existed to grant the request of the Indians, they were entitled as a matter of moral right to have the moneys coming to them used for the education of their children at the schools of their choice. Care must be taken, of course, to see that any petition by the Indians is genuine, and that the money appropriated for any given school represents only the *pro rata* proportion to which the Indians making the petition are entitled. But if these two conditions are fulfilled, it is, in my opinion, just and right that the Indians themselves should have their wishes respected when they request that their own money—not the money of the public—be applied to the support of certain schools to which they desire to send their children. The practice will be continued by the Department unless Congress should decree to the contrary, or, of course, unless the courts should decide that the decision of the Department of Justice is erroneous.

It is, however, greatly to be desired that the bill introduced by Representative Lacey and providing for permission to allot these annuities in severalty to the Indians, exactly as is now done with land, should be enacted into law. Its enactment and administration would prevent the raising of any question of this character, for each individual Indian would then be left free to use the money to which he is entitled outright on his own initiative instead of having it used for him by the Secretary of the Interior in consequence of his petition. I earnestly hope that Congress will at once enact this bill into law.

31 The special case of the St. Labre school stands by itself, the question being whether the contract entered into is one authorized by the finding of the Department of Justice in January, 1904, or whether it is one of those cases forbidden under the decision of the Department of Justice of January, 1902. The Attorney-General will speedily report the category in which this case comes.

THEODORE ROOSEVELT."

Enclosure.

"DEPARTMENT OF JUSTICE,
WASHINGTON, *February 2nd*, 1905.

SIR: By your direction I submit a statement of what occurred in January, 1904, concerning your decision to permit the use of the

interest upon certain funds held in trust by the United States for the support of sectarian schools.

The question was raised whether a certain declaration of Congress in appropriating for Indian day and industrial schools precluded the use of the funds in question in that way, and Mr. Russell, of this Department, received a note from Secretary Hitchcock, dated January 19, 1904:

'The President has requested me to inform you that there will be a meeting at the Executive office of the White House at 3 p. m., on Friday next (22nd) to confer with reference to certain Indian matters recently brought to your notice, at which meeting the President requests your presence.'

The Attorney-General (Mr. Knox) and Mr. Russell, who had been considering the question, proceeded to the meeting, at which were present Secretaries Hitchcock, Cortelyou, and Wilson and Postmaster-General Payne. On behalf of the Attorney-General, a memorandum was submitted in favor of the legality of the use of the funds, and Secretary Hitchcock submitted a letter from the Commissioner of Indian Affairs. Thereupon the question was discussed at length and left for your determination.

32 Besides the memorandum referred to, there was a long one giving the reasons for the conclusion reached by the Attorney-General, the substance of which Mr. Russell stated.

The brief memorandum which was left with you was as follows, as appears by a copy retained at the Department of Justice:

'Partial list of Indian funds in the Treasury in trust for particular tribes, a portion of the interest on which funds may be used for educational purposes by the Secretary of the Interior under authority of the act of April 1, 1880 (21 Stat., 70), and other acts, without appropriation by Congress.'

These funds can be used for sectarian schools, but it would be well to do that otherwise than under contracts.

(1) Menominee fund: Interest, $7,651.96 per annum. (Treaty of 1848, art. 5, 9, Stat. L., 952).

(2) Menominee log fund: Interest, $76,313.98 per annum. (Act of Mar. 22, 1882, 22 Stat. L., 30; act of June 12, 1890, 26 Stat. L., 146).

(3) Osage fund: Interest, $416,371.95 per annum. (Treaty of 1865, art. 2, 14 Stat. L., 687; act of July 15, 1870, 16 Stat. L., 362; act of June 16, 1880, 21 Stat. L., 292.

(4) Sioux, $3,000,000 fund: Interest, $150,000 per annum. (Act of Mar. 2, 1889, 25 Stat. L., 895.)

The long memorandum (23 pages of typewriting) discussed the question substantially as follows:

It explained the history of educational work by the Government among the Indians before 1873, under act of March 3, 1819, appropriating $10,000 to be a permanent annual fund without reappropriation for the employment of teachers among the Indians. It explained the beginning of the contract system under President Grant, which had not existed under the act of 1818, and began after the act of 1870 appropriating $100,000 for the support of Indian

schools among Indian tribes not otherwise provided for, *i. e.*, among the tribes not having treaties containing stipulations providing funds for educational purposes. It showed the beginning
33 of the general annual appropriations for Indian schools in 1876 'for the support of industrial schools and other educational purposes for the Indian tribes,' that this appropriation, gradually increasing in amount, has practically continued until the present time; it set forth the language of the current appropriations of public money for Indian day and industrial schools, and the declaration of Congress following as a proviso of that language, viz: That it is 'the settled policy of the Government to hereafter make no appropriation whatever for education in any sectarian school,' and a subsequent declaratory proviso in the appropriation act for 1899, viz: 'This being the final appropriation for sectarian schools' (30 Stat. L., 942). It then took up the question of the effect of the declaration of Congress as to which Senator Vest said — debate (Cong. Rec., vol. 31, 3074):

'This drastic declaration in this bill declaring that Congress of the United States will not make any appropriation to a sectarian school of any denomination does not meet my concurrence.'

It argued from the second declaration above quoted and other things that the word 'appropriation' meant Congressional appropriation, and that what Congress declared was that Congress itself would not thereafter make appropriations to support sectarian schools, and not that the Secretary of the Interior was forbidden to 'appropriate' funds for that purpose under pre-existing laws. It quoted the reports of the Commissioner of Indian Affairs, Mr. Morgan, of 1891 and 1892, to show that the evil complained of by the opponents of Government aid to sectarian schools was that 'it is contrary to the letter and spirit of the Constitution of the United States, and utterly repugnant to our American institutions and our American history to take from the public moneys funds for the support of sectarian institutions,' and 'that no moneys from the public treasury should be devoted to sectarian or church institutions.'
34 It confirmed this idea that it was the use of public moneys of the United States or of the American people that was objected to by quoting the language of the Indian appropriation act of 1894 (28 Stat., 311), and a report of Secretary Hoke Smith, of December 13th, 1894 (H. Ex. Doc. No. 107, 53rd Cong., 3rd sess.), in which he said: 'I agree fully with those who oppose the use of public money for the support of sectarian schools.' It quoted the debates in Congress (53rd Cong., 3rd sess., Cong. Rec. vol. 27, pp. 2505, 994, 995, 1114, 2499, 2541, 2543, 2544; 54th Cong., 1st sess., Cong. Rec., vol. 28, pp. 1983, 2082, 2080, 2084) to show that the intention of Congress was to reduce the regular appropriation of public funds so as to get rid of contract schools aided by that appropriation of money belonging to the American people. It further showed that in the case of the Osage schools and mission schools on the Sac and Fox reservations in Oklahoma, Indian trust funds continued to be used and the contract system applied to them (Rept. Com. Ind. Aff., 1898, p. 17) after the declaration of Congress.

The argument of the memorandum briefly was that, notwithstanding the declaration of Congressional intent not to make appropriations in the future of public moneys of the American people for sectarian institutions, the previous laws giving the Secretary of the Interior discretion to use certain moneys of the Indians held in trust in any way that he might see fit, including assistance to sectarian schools, were not repealed, and consequently his discretion remained. For some of these laws, see 14 Stat., 687; 16 Stat., 362; 21 Stat., 292; 22 Stat., 30; 25 Stat., 895; 26 Stat., 146; *id.*, 344.

This was the legal advice given to you as to your authority to continue the use of the interest on certain Indian trust funds. It appeared in the discussion that some of the Indian tribes desired such use of their own moneys, and various reasons were given to show the advantage of continuing to support certain existing sectarian schools on account of their efficient work or special beneficial influence; but with these considerations the Department of Justice was not especially concerned.

Respectfully,

W. H. MOODY,
*Attorney-General.*

The President."

Accordingly the following contracts were made by the United States with various sectarian organizations for the education of Indian children from "Tribal Funds" for the fiscal year ending June 30, 1905:

| Name of School. | Denomination. | Pupils. | Tribe. | Rate per annum. | Total for year. |
|---|---|---|---|---|---|
| St. Joseph | Catholic | 170 | Menominee | $108 | $18,360 |
| St. Louis | Catholic | 75 | Osage | 125 | 9,375 |
| St. John | Catholic | 65 | Osage | 125 | 8,125 |
| Immaculate Conception | Catholic | 65 | Sioux | 108 | 7,020 |
| Holy Rosary | Catholic | 200 | Sioux | 108 | 21,600 |
| St. Francis | Catholic | 250 | Sioux | 108 | 27,000 |
| St. Labre | Catholic | 60 | Northern Cheyenne. | 108 | 6,480 |
| St. Mary | Catholic | 10 | Quapaw | 50 | 500 |
| Zoas' Boarding School | Lutheran | 40 | Menominee | 108 | 4,320 |
| Total | | 935 | | | $102,780 |

In June, 1905, the Commissioner of Indian Affairs was notified by the "Bureau of Catholic Indian Missions" that it was prepared to care for and educate during the fiscal year ending June 30, 1906, Indian pupils at the several schools carried on by it among the Sioux, Menominee, Osage, Northern Cheyenne, and Quapaw tribes upon the same terms and conditions as stipulated in its contracts for carrying on these schools for the fiscal year 1905 and requested that it be granted a renewal of the contracts in question, payable in each case from the trust and treaty funds of the tribe among which the school is located for the twelve months beginning July 1, 1905.

To this application the Commissioner replied that the request would receive careful consideration; that the applicability of the trust and treaty funds had been submitted to the proper authorities for a definite determination and indicated how petitions should be prepared, and the safeguards under which the signature of the Indians should be made. Petitions were duly filed, signed under all these safeguards, by the Catholic Indians.

In the meantime, the schools were opened at the usual time and instruction given to the required number of pupils in the confidence that the contracts applied for would be renewed.

The Attorney-General not having rendered any decision in the matter, the President, by a letter dated December 23, 1905, addressed to the Commissioner of Indian Affairs, after quoting a part of his letter of February 3, 1905, hereinbefore referred to, said:

"There are two kinds of Indian funds involved in this matter. One is the trust fund, which requires no appropriation by Congress, and which clearly is to be administered as the Indians themselves request. As regards this fund you will treat it on the assumption that the Indians have the right to say how it shall be used, so far as choosing the schools to which their children are to go is concerned; and each Indian is a tribe to be credited with his pro rata share of the funds which you will apply for him to the Government school where that is the school used, or to the church school where that is the school used, instead of segregating any portion of the fund for the support of the Government school and prorating the balance.

"The other fund consists of moneys appropriated by Congress in pursuance of treaty stipulations. As to these moneys it is uncertain as to whether or not the prohibition by Congress of their
37 application for contract schools applies—that is, whether or not we have the power legally to use these moneys as we clearly have the power to use the trust funds. It appears that certain of the contract schools are now being run in the belief that my letter quoted above authorized the use of the treaty funds. It would be a great hardship, in the absence of any clearly defined law on the subject, to cut them off at this time arbitrarily, and inasmuch as there is a serious question involved, I direct that until the close of the fiscal year these schools be paid for their services out of the moneys appropriated by Congress in pursuance of treaty obligations, on the same basis as the schools paid out of the trust funds—always exercising the precautions directed in my letter of February 3rd, 1905, 'to see that any petition by the Indians is genuine, and that the money appropriated for any given school represents only the pro rata proportion to which the Indians making the petition are entitled.' But no new contracts are to be entered into for such payments after the close of the present fiscal year, unless there is authorization by Congress or some determination by the courts."

Accordingly, the contracts for the fiscal year ending June 30, 1905, hereinafter set forth, were renewed for the fiscal year ending June 30, 1906, the new contracts being executed as of July 1, 1905.

The services have been performed under all these contracts and the money paid in all of them, except under the contract with the

"Bureau of Catholic Indian Missions" for the education of 250 Indian pupils at St. Francis Mission School on the Rosebud Reservation. The payment of the $27,000 which is due under this contract has been withheld pending the decision by this honorable court as to validity of the contract and the appropriation of tribal funds for such purposes.

38 18. And these defendants, specifically answering as to the contract in dispute, say:

That it is a contract made between F. E. Leupp, Commissioner of Indian Affairs, for and on behalf of the United States of America and the "Bureau of Catholic Indian Missions," executed as of July 1, 1905, for the care, education, and maintenance of 250 Indian pupils at the St. Francis Mission School, Rosebud Reservation, South Dakota, at $108 per capita, per annum, amounting to $27,000. The contract was approved by Jesse E. Wilson, acting Secretary of the Interior.

Application for the contract was made by the "Bureau of Catholic Indian Missions" on June 6, 1905.

On March 26, 1906, a petition duly and genuinely signed by 212 members of the Sioux tribe of Indians of the Rosebud Agency, South Dakota, was filed asking that the said contract applied for be entered into with the Bureau.

The payments under the contract were to be made from the "Sioux Trust Fund" and the "Sioux Treaty Fund," as hereinbefore described, in the discretion of the Commissioner of Indian Affairs.

There are 4,986 Indians on the rolls of the Rosebud Reservation, and the amount of tribal income applicable to education, in the discretion of the Commissioner, is—

$250,047.90, or a per capital of $50.15.

The 212 petitioners represent 669 shares, or $33,550.35, and of this, they ask that $27,000 be used for the education of their children in St. Francis Mission School. The following table will represent the pro rata shares in these tribal funds, and the per capital share:

| | | |
|---|---|---|
| 4,986 Indians, | $250,047.90 | Tribal Funds $50.15 per capita. |
| 669 shares Petitions, | 33,550.35 | Tribal Funds $50.15 per capita. |
| 4,317 Petitions (non-petitions) | | |
| 4,986 | $250,047.90 | Tribal Funds $50.15 per capita. |

39 The cost of the Government school for the fiscal year was about $76,830. Since the shares of the petitioning Indians amount to $33,550.35 and the sum asked for the school is only $27,000 out of this share, and the petitions were genuinely signed, the terms of the executive order of President Roosevelt of February 3d, 1905, *e. g.*, "to see that any petition by the Indians is genuine, and that the money appropriated for any given school represents only the pro rata proportion to which the Indians making the petition are entitled" have been strictly carried out.

The services under this contract have been fully performed to the satisfaction of the Commissioner of Indian Affairs, and the twenty-seven thousand dollars ($27,000) agreed to be paid is due and payable, if this honorable court determines that it is legally payable out of the "Sioux Trust Fund" and the "Sioux Treaty Fund."

19. In connection with the sections of acts of Congress cited in the bill, these defendants, further answering, say:

That on December 13, 1905, Mr. Stephens introduced in the House of Representatives the following bill:

"A BILL TO PROHIBIT THE USE OF INDIAN TRUST FUNDS FOR THE PURPOSE OF EDUCATING INDIAN CHILDREN IN SECTARIAN SCHOOLS.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That in the administration and disbursement of funds held in trust for the Indian tribes by the United States that part of the act of June 7, 1897 (Thirteenth Statutes, page 79), which provides, 'and it is hereby declared to be the settled policy of the Government to hereafter make no appropriation whatever for education in any sectarian school,' shall apply to any trust fund or interest thereon held by this Government for the benefit of any Indian tribes by the United States, and no such trust funds shall be appropriated or used for purposes of education in any sectarian or denomination school so long as such trust fund belongs to any Indian tribe."

The bill did not pass, but was laid on the table in the Committee on Indian Affairs, to whom it had been referred.

These defendants further say that when the Senate of the United States was considering the Indian Appropriation Bill for the fiscal year ending June 30, 1906, it passed an amendment reported by the Committee on the District of Columbia as amended by Senator McCumber.

The original amendment was in these words:

"That no portion of the funds appropriated by this act, nor the principal nor interest of any Indian Trust or Tribal Funds held by the United States for the benefit of any Indian tribe shall be available, nor be expended for the support of any sectarian or denominational school."

This amendment was not passed by the Senate in this form, but as amended by Senator McCumber as follows:

"Provided, however, that the individual owner or beneficiary of any interest in such fund who may desire to educate his ward, child or children in any school other than a Government school, may, by written order signed by him, direct that any portion of the interest accruing to him, or which would be allotted to him on such fund, be paid to the school in which such ward, child or children may be educated."

No part of the amendment, however, was passed by Congress, the whole being eliminated from the bill in conference committee, whose report was adopted.

These defendants further say as showing the attitude of Congress, that on February 10, 1902, there was a decision by the then
41 Attorney-General that the rations to which the Sioux Indians were entitled under the agreement ratified by act of Congress of February 28, 1877 (19th Stat. L., 254), could not be distributed to children in the mission schools.

The effect of this was that rations were distributed to children who remained at home in ignorance and away from school, and were also distributed to children who attended Government schools, but those children who attended mission schools were deprived of the rations.

In the Indian Appropriation Act for the fiscal year ending June 30, 1907, Congress enacted as follows:

"Mission schools on an Indian reservation, may, under rules and regulations prescribed by the Commissioner of Indian Affairs, receive for such Indian children duly enrolled therein, the rations of food and clothing to which said children would be entitled under treaty stipulation if such children were living with their parents."

These defendants further say that Congress, by an act approved June 28, 1906, "for the division of land and funds of the Osage Indians in Oklahoma Territory and for other purposes," enacted, among other things, as follows:

"There shall be set aside from the royalties received from oil and gas not to exceed fifty thousand dollars per annum for ten years from the first day of January, nineteen hundred and seven, for the support of the Osage Boarding School, and for other schools on the Osage Indian Reservation conducted, or to be established, and conducted for the education of Osage children."

There are three schools on the Osage Indian reservation conducted for the education of Osage children: The Osage Boarding School, the St. Louis School for Girls, and the St. John School for Boys; the first is a Government school, the latter two are Catholic
42 Mission Schools, for whom as hereinbefore stated, contracts have been made uninterruptedly for a great number of years, for the education of Indian children of the Osage tribe, payable out of Osage Treaty Funds.

And the defendants, having fully answered the bill, pray to be hence dismissed with their costs.

CHAS. H. TREAT.
ROBERT J. TRACEWELL.

DISTRICT OF COLUMBIA, *ss:*

We, F. E. Leupp, E. A. Hitchcock, Leslie M. Shaw, Charles H. Treat and Robert J. Tracewell, do each solemnly swear that we have read the foregoing answer by us subscribed, and know the contents thereof, and that the facts therein stated upon our personal knowledge are true, and those stated upon information and belief we believe to be true.

F. E. LEUPP.
E. A. HITCHCOCK.
L. M. SHAW.
CHAS. H. TREAT.
ROBERT J. TRACEWELL.

DANIEL W. BAKER,
*U. S. Attorney in & for D. C.*

Subscribed and sworn to by the said F. E. Leupp, and E. A. Hitchcock, before me this nineteenth day of December, A. D., 1906.

[SEAL.] W. BERTRAND ACKER,
*Notary Public in and for D. C.*

43 Subscribed and sworn to before me by Chas. H. Treat and Robert J. Tracewell this nineteenth day of December A. D. 1906.

[SEAL.] HIRAM W. BARRETT,
*Notary Public for the D. C.*

Subscribed and sworn to before me, by Leslie M. Shaw, this twentieth day of December, 1906.

[SEAL.] JAS. N. FITZPATRICK,
*Notary Public, D. C.*

44 PLAINTIFF'S EXHIBIT No. 1.

Refer in reply to the following:
Finance 7308/1907.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *January* 31, 1907.

Mr. Charles C. Binney, 703 North American building, Philadelphia, Pennsylvania.

SIR: I am in receipt of your communication of the 22nd instant, saying that as associate counsel with Mr. S. M. Brosius, the plaintiff's attorney of record in the case of Quick Bear *et al. vs.* Leupp *et al.*, Equity number 26271, in the Supreme Court of the District of Columbia, you have secured the consent of the United States Attorney to ask me certain questions, with the understanding that after my answers have been received further questions may be asked by him, and that all the information so furnished shall be treated as evidence in the case. The questions which you wish to ask are as follows:

1. What was the amount of the share of the Sioux Tribe of Indians of the Rosebud Agency in the Sioux Treaty Fund appropriated for the fiscal year 1905-'06?
2. What was the amount of the share of the Sioux Tribe of Indians of the Rosebud Agency in the income of the Sioux Trust Fund in the fiscal year 1905-'06, available for education?
3. What was the cost of the maintenance of the government school or schools at the Rosebud Agency for the fiscal year 1905-'06?
4. How much of this cost was paid out of the Sioux Treaty Fund, and how much out of the income of the Sioux Trust Fund?
5. What part, if any, of the cost of maintenance of the government schools was charged against the 669 shares covered by the petition for a contract with the St. Francis Mission School, or was the whole amount charged against the shares of the non-petitioning Indians?

45 6. What amounts have been paid from any Indian Treaty Funds or from the income of any Indian Trust Funds, for the support of sectarian schools for the fiscal years 1896–'97 to 1905–'06, inclusive? The answer should give full details as to all the payments, stating whether Treaty Funds or Trust Funds in each instance.

The answers to your questions are as follows:

| | |
|---|---|
| 1. Subsistence and Civilization | $168,277.50 |
| Education, Sioux Nation | 54,098.50 |
| | $222,375.60 |
| 2. Interest on Sioux Fund Rosebud (Education) | $17,245.48 |
| 3. $76,836.00 | |
| 4. Interest on Sioux Trust Fund | $14,760.00 |
| Treaty (Subsistence and Civilization and Education, Sioux Nation) | 62,076.00 |
| | $76,836.00 |

5. The funds proposed to be used for payments under this contract are the Trust and Treaty Funds named in the contract. These funds are not divided *pro rata*, and the shares of the Indians are computed on a theoretical basis, and cannot be reduced to a practical one unless actually divided; therefore, no part of the cost of maintaining the Government schools would be charged specifically against the 669 shares covered by the petition for a contract with St. Francis Mission School; nor would the whole amount be charged against the shares of the non-petitioning Indians, but the cost would be against the entire amount of the funds, and the cost of the Mission school would be charged to the same funds, thus making each class of Indians ratably bear the cost of each kind of school—Government and Mission.

6.

| | Treaty funds. | Int. on trust funds. |
|---|---|---|
| 1896–7 | $28,083.40 | $8,959.67 |
| 1897–8 | 36,656.56 | 3,105.00 |
| 1898–9 | 19,887.71 | 14,416.41 |
| 1899–00 | 14,237.08 | 10,451.28 |
| 1900–1 | 3,015.62 | 9,767.50 |
| 1901–2 | 3,456.00 | 6,814.01 |
| 1902–3 | 3,456.00 | 5,043.50 |
| 1903–4 | 3,456.25 | 13,790.47 |
| 1904–5 | 66,758.72 | 23,935.76 |
| 1905–6 | 28,063.52 | 26,115.05 |
| | $207,070.86 | $122,398.65 |

Very respectfully,

F. E. LEUPP,
*Commissioner.*

W. W. McC. (O.)

46 PLAINTIFF'S EXHIBIT NO. 2.

Refer in reply to the following:
Finance
11986/1907
Enclosures.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *February* 13, 1907.

Mr. Charles C. Binney, 703 North American Building, Philadelphia, Pennsylvania.

SIR: I have received your letter of the 5th instant, acknowledging receipt of Office letter of the 31st ultimo, wherein certain information requested in your letter of the 22nd ultimo was furnished. You ask for a supplemental answer to your question No. 5, showing to what extent, if at all, "the total balance which would eventually be divided per capita in some form" among the Sioux Indians on the Rosebud Reservation is reduced by the expenditure of tribal money for the support of the St. Francis Mission School.

You also ask for fuller details in reply to question No. 6, showing a statement of each payment made for the support of any sectarian school, giving the name of the school, the amount of the payment, the name of the fund drawn upon and of the tribe whose fund was so used.

The answers, in the manner indicated by you, are herewith enclosed. You will observe a slight increase in the amounts for 1897 and 1898 owing to another school's being now included which
47 was overlooked in the former statement.

Very respectfully, F. E. LEUPP, *Commissioner.*

48 *Answer No. 5.*

In explanation of the statement quoted in your letter you are advised that at the time the instructions were issued it was the purpose to use all Treaty and Trust Funds, but afterward it was determined to limit payments to the same funds out of which the Government Schools were supported. This eliminated the fund out of which per capita payments to the Indians were made, and confined the payments to those funds which are not susceptible of equal division. Theoretically, however, any diversion of tribal money for the support of this mission school reduces the total balance due the tribe by the amount so used; practically, in the case in point it does not, as there is no per capita division of any balance of the funds utilized for these payments. The petitioners theoretically and practically contribute to the support of the Government School, while the non-petitioners in like manner contribute to the support of the mission school; but as there is no actual per capita division of the balance, the reduction so made can have no possible bearing except as an academic proposition.

1894–'95.

| Name of school. | Date of payments. | Amount of payments. | Name of fund. | Name of tribe. |
|---|---|---|---|---|
| St. Louis Boarding, Pawhuska, Okla. | Oct. 30, '94 | $1504.17 | | |
| | Jan. 22, '95 | 1562.50 | Interest on Osage Fund..... | Osage. |
| | Apr. 10, '95 | 1562.50 | | |
| | Jul. 20, '95 | 1562.50 | | |
| St. John's Boarding, Gray Horse, Okla. | Nov. 6, '94 | 1242.70 | | |
| | Jan. 22, '95 | 1250.00 | Interest on Osage Fund..... | Osage. |
| | Apr. 13, '95 | 1250.00 | | |
| | Jul. 9, '95 | 1250.00 | | |
| Holy Rosary Boarding, Pine Ridge, S. Dak. | Oct. 11, '94 | 3721.50 | | |
| | Jan. 18, '95 | 3780.00 | Education Sioux Nation..... | Pine Ridge Sioux. |
| | Apr. 8, '95 | 3780.00 | | |
| | Jul. 12, '95 | 3780.00 | | |
| St. Francis Boarding, Rosebud, S. Dak. | Oct. 12, '94 | 2565.00 | | |
| | Jan. 16, '95 | 2565.00 | Education Sioux Nation ..... | Rosebud Sioux. |
| | Apr. 10, '95 | 2565.00 | | |
| | Jul. 16, '95 | 2565.00 | | |
| St. Mary's Industrial, Sacred Hart, Okla. | Feb. 25, '95 | 1260.00 | Fulfilling treaties with Pottawatomies, Education. | Citizen Band Pottawatomies. |
| | Feb. 25, '95 | 1260.00 | | |
| | May 7, '95 | 1122.84 | | |

Treaty ..... $30,032.46
Trust ..... 11,184.37



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| Name of school. | Date of payments. | Amount of payments. | Name of fund. | Name of tribe. |
|---|---|---|---|---|
| St. Louis Boarding, Pawhuska, Okla. | Oct. 18, '95 | 1562.50 | | |
| | Jan. 9, '96 | 1562.50 | Interest on Osage Fund..... | Osage. |
| | Apr. 13, '96 | 1562.50 | | |
| | Jul. 9, '96 | 1562.50 | | |
| St. John's Boarding, Gray Horse, Okla. | Oct. 16, '95 | 2463.81 | | |
| | Jan. 9, '96 | 1250.00 | Interest on Osage Fund..... | Osage. |
| | Apr. 23, '96 | 1250.00 | | |
| | Jul. 10, '96 | 1250.00 | | |
| Holy Rosary Boarding, Pine Ridge, S. Dak. | Oct. 19, '95 | 3456.00 | | |
| | Jan. 14, '96 | 3780.00 | Education Sioux Nation..... | Pine Ridge Sioux. |
| | Apr. 21, '96 | 3780.00 | | |
| | Aug. 18, '96 | 3780.00 | | |
| St. Francis Boarding, Rosebud, S. Dak. | Oct. 14, '95 | 2565.00 | | |
| | Jan. 20, '96 | 2565.00 | Education Sioux Nation..... | Rosebud Sioux. |
| | Apr. 14, '96 | 2565.00 | | |
| | Jul. 10, '96 | 2565.00 | | |
| St. Mary's Academy, Sacred Heart, Okla. | Nov. 29, '95 | 1431.60 | Fulfilling treaties with Pottawatomies, Education. | Citizen Band Pottawatomies. |
| | Feb. 11, '96 | 1588.69 | | |
| | May 7, '96 | 1377.49 | | |
| | Sept. 26, '96 | 1326.46 | | |
| St. Benedict's School, Sacred Heart, Okla. | Feb. 1, '96 | 1107.06 | Fulfilling treaties with Pottawatomies, Education. | Citizen Band Pottawatomies. |
| | Feb. 1, '96 | 1305.00 | | |

Treaty..... $33,192.30
Trust..... 12,463.81

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| Name of school. | Date of payments. | Amount of payments. | Name of fund. | Name of tribe. |
|---|---|---|---|---|
| Grace Mission, Crow Creek, S. Dak. | Jan. 13,'97 | $875.00 | Education Sioux Nation..... | Crow Creek. |
| | Feb. 6,'97 | 301.40 | | |
| St. Louis Boarding, Pawhuska, Okla. | Oct. 31,'96 | 1562.50 | Interest on Osage Fund..... | Osages. |
| | Jan. 12,'97 | 1562.50 | | |
| | Apr. 7,'97 | 1562.50 | | |
| | Jul. 14,'97 | 1562.50 | Fulfilling Treaties with Osages. | |
| St. John's Boarding, Gray Horse, Okla. | Oct. 31,'96 | 1201.04 | Interest on Osage Fund..... | Osages. |
| | Jan. 12,'97 | 1250.00 | | |
| | Apr. 19,'97 | 1250.00 | | |
| | Jul. 14,'97 | 1250.00 | Fulfilling Treaties with Osages. | |
| Holy Rosary Boarding, Pine Ridge, S. Dak. | Nov. 18,'96 | 3375.00 | Education Sioux Nation..... | Pine Ridge Sioux. |
| | Jan. 27,'97 | 3375.00 | | |
| | Apr. 27,'97 | 3375.00 | | |
| | Aug. 5,'97 | 3375.00 | | |
| St. Francis Boarding, Rosebud, S. Dak. | Oct. 29,'96 | 2430.00 | | |
| | Jan. 6,'97 | 2430.00 | Education Sioux Nation..... | Rosebud Sioux. |
| | Apr. 7,'97 | 2430.00 | | |
| | Jul. 13,'97 | 2430.00 | | |
| Immaculate Conception, Crow Creek, S. Dak. | Jan. 14,'97 | 810.00 | Education Sioux Nation..... | Crow Creek Sioux. |
| | Apr. 9,'97 | 810.00 | | |
| | Jul. 10.'97 | 810.00 | | |
| St. Mary's Academy, Sacred Heart, Okla. | Dec. 4,'96 | 988.80 | Fulfilling Treaties with Pottawatomies, Education. | Citizen Band Pottawatomies. |
| | Feb. 3,'97 | 1614.04 | | |
| | Apr. 29,'97 | 1690.80 | | |
| | Jul. 24,'97 | 1547.60 | | |

Treaty ..... $35040.14
Trust ..... 8388.54

| Name of school. | Date of payments. | Amount of payments. | Name of fund. | Name of tribe. |
|---|---|---|---|---|
| St. Louis Boarding, Pawhuska, Okla. | Oct. 16, '97 | $1354.17 | Fulfilling Treaties with Osages.. | Osage. |
| | Jan. 20, '98 | 2343.75 | | |
| | Apr. 7, '98 | 2140.62 | | |
| | Jul. 14, '98 | 1603.33 | | |
| | Jul. 14, '98 | 521.67 | Interest on Osage Fund. | |
| St. John's Boarding, Hominy Creek, Okla. | Oct. 27, '97 | 1127.08 | Fulfilling Treaties with Osages. | |
| | Jan. 20, '98 | 1757.47 | | |
| | Apr. 8, '98 | 851.68 | Interest on Osage Fund..... | Osage. |
| | | 898.32 | | |
| | Jul. 13, '98 | 1852.67 | Fulfilling Treaties with Osages. | |
| Holy Rosary Boarding, Pine Ridge, S. Dak. | Oct. 27, '97 | 3105.00 | Education Sioux Nation..... | Pine Ridge Sioux. |
| | Jan. 19, '98 | 3105.00 | | |
| | Jul. 21, '98 | 3105.00 | | |
| | Apr. 23, '98 | 3105.00 | Interest on Sioux Fund Pine Ridge. | |
| St. Francis Boarding, Rosebud Agency, S. Dakota. | Oct. 27, '97 | 2187.00 | Education Sioux Nation..... | Rosebud Sioux. |
| | Jan. 21, '98 | 2187.00 | | |
| | Apr. 7, '98 | 2187.00 | | |
| | Jul. 8, '98 | 2187.00 | | |
| Sacred Heart Boarding, Sacred Heart, Okla. | Oct. 28, '97 | 1070.40 | Fulfilling Treaties with Pottawatomies, "Education." | Citizen Pottawatomies. |
| | Jan. 17, '98 | 1140.26 | | |
| | Apr. 22, '98 | 990.00 | | |
| | Jul. 14, '98 | 810.59 | | |
| St. Mary's Academy, Sacred Heart, Okla. | Oct. 27, '97 | 1872.00 | Fulfilling Treaties with Pottawatomies, "Education." | Citizen Pottawatomies. |
| | Jan. 18, '98 | 1707.26 | | |
| | Apr. 25, '98 | 1616.00 | | |
| | Jul. 26, '98 | 1296.00 | | |
| | | Treaty..... | $40744.60 | |
| | | Trust..... | 5376.67 | |

| Name of school. | Date of payments. | Amount of payments. | Name of fund. | Name of tribe. |
|---|---|---|---|---|
| St. Louis Boarding, Pawhuska, Okla. | Oct. 14, '98 | $1812.50 | | |
| | Jan. 11, '99 | 2091.03 | Interest on Osage Fund..... | Osage. |
| | Apr. 18, '99 | 1929.16 | | |
| | Jul. 15, '99 | 2026.09 | | |
| St. John's Boarding, Hominy Creek, Okla. | Oct. 14, '98 | 1493.75 | | |
| | Jan. 19, '99 | 1875.00 | Interest on Osage Fund..... | Osage. |
| | Apr. 18, '99 | 1595.13 | | |
| | Jul. 17, '99 | 1593.75 | | |
| Holy Rosary Boarding, Pine Ridge, S. Dak. | Oct. 18, '98 | 2322.00 | | |
| | Jan. 21, '99 | 2322.00 | Education, Sioux Nation ..... | Pine Ridge Sioux. |
| | Apr. 27, '99 | 2322.00 | | |
| | Jul. 21, '99 | 2322.00 | | |
| St. Francis Boarding, Rosebud, S. Dak. | Oct. 10, '98 | 1647.00 | | |
| | Jan. 9, '99 | 1647.00 | Education, Sioux Nation ..... | Rosebud Sioux. |
| | Apr. 15, '99 | 1647.00 | | |
| | Jul. 17, '99 | 1647.00 | | |
| St. Mary's Academy, Sacred Heart, Okla. | Oct. 14, '98 | 693.75 | Fulfilling Treaties with Pottawatomies, "Education." | Citizen Pottawatomies. |
| | Jan. 31, '99 | 1088.99 | | |
| | Apr. 19, '99 | 1148.61 | | |
| | Jul. 26, '99 | 1080.36 | | |

Treaty..... $19,887.71
Trust..... 14,416.41

| Name of school. | Date of payments. | Amount of payments. | Name of fund. | Name of tribe. |
|---|---|---|---|---|
| St. Louis Boarding, Pawhuska, Okla. | Oct. 14, '99 | $1484.37 | Interest on Osage Fund..... | Osages. |
| | Jan. 13, '00 | 2109.37 | | |
| | Apr. 14, '00 | 2041.66 | Fulfilling treaties with Osages... | Osages. |
| | Jun. 5, '00 | 1162.43 | Interest on Osage Fund..... | Osages. |
| | Jul. 19, '00 | 883.92 | | |
| Holy Rosary Boarding, Pine Ridge, S. Dak. | Oct. 23, '99 | 1080.00 | Education, Sioux Nation..... | Pine Ridge Sioux. |
| | Jul. 19, '00 | 1080.00 | | |
| | Apr. 23, '00 | 1080.00 | | |
| | Aug. 13, '00 | 1080.00 | | |
| St. Francis Boarding, Rosebud, S. Dak. | Oct. 23, '99 | 810.00 | Education, Sioux Nation..... | Rosebud Sioux. |
| | Jan. 10, '00 | 810.00 | | |
| | Apr. 9, '00 | 810.00 | | |
| | Jul. 7, '00 | 810.00 | | |
| St. Mary's Academy, Sacred Heart, Okla. | Oct. 24, '99 | 729.17 | Fulfilling treaties with Pottawotamies, "Education." | Citizen Pottawatomies. |
| | Jan. 31, '00 | 843.75 | | |
| | Apr. 14, '00 | 843.75 | | |
| | Jul. 18, '00 | 843.75 | | |
| St. John's Boarding, Hominy Creek, Okla. | Oct. 16, '99 | 1125.00 | Interest on Osage Fund..... | Osages. |
| | Jan. 13, '00 | 1487.09 | | |
| | Apr. 14, '00 | 1375.00 | Fulfilling treaties with Osages... | Osages. |
| | Jun. 5, '00 | 750.00 | Interest on Osage Fund..... | Osages. |
| | Jul. 19, '00 | 549.10 | | |
| Kate Drexel Boarding, Umatilla Reservation, Oregon. | Jan. 25, '00 | 300.00 | Interest on Umatilla General Fund. | Umatillas. |
| | Apr. 14, '00 | 300.00 | | |
| | Jul. 13, '00 | 300.00 | | |

Treaty ..... $14237.08
Trust..... 10451.28

55 1900–1901.

| Name of school. | Date of payments. | Amount of payments. | Name of fund. | Name of tribe. |
|---|---|---|---|---|
| St. Louis Boarding, Pawhuska, Okla. | Nov. 19, '00 | $1875.00 | Fulfilling Treaties with Osages.. | Osages. |
| | Feb. 12, '01 | 1875.00 | | |
| | May 7, '01 | 1875.00 | Interest on Osage Fund..... | Osages. |
| | Jul. 16, '01 | 1875.00 | | |
| St. John's Boarding, Hominy Creek, Okla. | Nov. 19, '00 | 1140.62 | Fulfilling Treaties with Osages.. | Osages. |
| | Feb. 1, '01 | 1357.33 | | |
| | May 1, '01 | 1388.54 | Interest on Osage Fund. | |
| | Jul. 15, '01 | 1396.63 | | |
| | | Treaty ..... | $3015.62 | |
| | | Trust ..... | 9767.50 | |

56 1901–1902.

| Name of school. | Date of payments. | Amount of payments. | Name of fund. | Name of tribe. |
|---|---|---|---|---|
| St. John's Boarding, Hominy Creek, Okla. | Oct. 23, '01 | $937.50 | Fulfilling Treaties with Osages.. | |
| | Jan. 18, '02 | 1031.25 | Interest on Osage School Fund.. | Osages. |
| | Apr. 7, '02 | 1134.37 | Interest on Osage Fund. | |
| | Jul. 24, '02 | 1166.89 | | |
| St. Louis Boarding, Pawhuska, Okla. | Oct. 23, '01 | 1500.00 | Fulfilling Treaties with Osages. | |
| | Jan. 18, '02 | 1018.50 | | |
| | Apr. 17, '02 | 1500.00 | Interest on Osage Fund. | |
| | Jan. 18, '02 | 481.50 | Interest on Osage School Fund.. | Osages. |
| | Jul. 24, '02 | 1500.00 | Interest on Osage School Fund. | |
| | | Treaty ..... | $3456.00 | |
| | | Trust ..... | 6814.01 | |

1902–1903.

| Name of school. | Date of payments. | Amount of payments. | Name of fund. | Name of tribe. |
|---|---|---|---|---|
| St. John's Boarding, Hominy Creek, Okla. | Jan. 24, '03 | $666.67 | Fulfilling Treaties with Osages.. | |
| | Feb. 5, '03 | 1062.50 | | |
| | May 6, '03 | 1062.50 | Interest on Osage Fund..... | Osages. |
| | Jul. 17, '03 | 1062.50 | Interest on Osage School Fund. | |
| St. Louis Boarding, Pawhuska, Okla. | Feb. 3, '03 | 1083.33 | Fulfilling Treaties with Osages. | |
| | Feb. 25, '03 | 643.50 | | |
| | Feb. 25, '03 | 544.00 | Interest on Osage School Fund. | |
| | May 6, '03 | 1187.50 | Interest on Osage Fund..... | Osages. |
| | Jul. 17, '03 | 1187.50 | Interest on Osage School Fund. | |
| | Treaty ..... | | $3456.00 | |
| | Trust ..... | | 5043.00 | |



1903–1904.

| Name of school. | Date of payments. | Amount of payments. | Name of fund. | Name of tribe. |
|---|---|---|---|---|
| St. John's Boarding, Hominy Creek, Okla. | Oct. 22, '03 | $656.25 | Fulfilling Treaties with Osages.. | Osages. |
| | Jan. 16, '04 | 656.25 | | |
| | May 4, '04 | 1375.00 | Interest on Osage Fund. | |
| | Jul. 20, '04 | 1343.75 | | |
| St. Louis Boarding, Pawhuska, Okla. | Oct. 22, '03 | 750.00 | Fulfilling Treaties with Osages. | |
| | Jan. 25, '04 | 750.00 | | |
| | May 4, '04 | 1515.84 | Interest on Osage Fund..... | Osages. |
| | May 4, '04 | 643.50 | Fulfilling Treaties with Osages. | |
| | Jul. 14, '04 | 2187.50 | Interest on Osage Fund. | |
| St. Joseph's Industrial, Green Bay, Wis. | Apr. 19, '04 | 3337.37 | Interest on Menomonee Log Fund. | Menomonees. |
| | Jul. 14, '04 | 4031.01 | | |
| | Treaty..... | | $3457.00 | |
| | Trust..... | | $13790.47 | |

| Name of school. | Date of payments. | Amount of payments. | Name of fund. | Name of tribe. |
|---|---|---|---|---|
| St. Louis Boarding, Pawhuska, Okla. | Oct. 25,'04 | $2031.25 | Fulfilling Treaties with Osages. | |
| | Jan. 28,'05 | 2096.81 | Interest on Osage School Fund. | |
| | Apr. 19,'05 | 2149.65 | Interest on Osage Fund..... | Osages. |
| | Jul. 28,'05 | 1964.63 | Fulfilling Treaties with Osages. | |
| St. John's Boarding, Hominy Creek, Okla. | Nov. 7,'04 | 1343.75 | Fulfilling Treaties with Osages.. | Osages. |
| | Jan. 28,'05 | 81.00 | | |
| | Jul. 28,'05 | 1301.84 | | |
| | Jan. 28,'05 | 1389.10 | Interest on Osage Fund. | |
| | Apr. 18,'05 | 1395.83 | | |
| Holy Rosary Mission, Pine Ridge, S. Dak. | Nov. 12,'04 | 4617.00 | | |
| | Feb. 6,'05 | 5400.00 | Education Sioux Nation..... | Pine Ridge Sioux. |
| | Apr. 12,'05 | 5400.00 | | |
| | Aug. 21,'05 | 5400.00 | | |
| Immaculate Conception Mission, Crow Creek Agency, S. Dak. | Oct. 27,'04 | 1755.00 | | |
| | Jan. 10,'05 | 1755.00 | Education Sioux Nation..... | Crow Creek Sioux. |
| | Jun. 2,'05 | 1537.80 | | |
| | Jul. 28,'05 | 1542.26 | | |
| | Jun. 2,'05 | 217.20 | Support of Sioux, Yankton Tribe, 1905. | Yankton Sioux. |
| | Jul. 28,'05 | 212.74 | | |
| St. Francis Mission, Rosebud, S. Dak. | Nov. 5,'04 | 6641.10 | | |
| | Jan. 16,'05 | 6750.00 | Education Sioux Nation..... | Rosebud Sioux. |
| | Apr. 10,'05 | 6750.00 | | |
| | Jul. 28,'05 | 6750.00 | | |
| St. Joseph Industrial, Green Bay, Wis. | Oct. 25,'05 | 4140.00 | | |
| | Jan. 19,'05 | 4413.91 | Interest on Menomonee Log Fund. | Menomonees. |
| | Apr. 8,'05 | 4329.60 | | |

| | | | | |
|---|---|---|---|---|
| Zoar Indian Missions, Green Bay, Wis. | Jul. 12, '05 | 3660.72 | | |
| | Nov. 2, '04 | 58.50 | | |
| | Feb. 4, '05 | 82.46 | Interest on Menomonee Log Fund. | Menomonees. |
| | Apr. 18, '05 | 91.18 | | |
| | Jul. 28, '05 | 128.76 | | |
| St. Labres Mission, Tongue River, Mont. | Jun. 2, '05 | $1620.00 | Support of Northern Cheyenne & Arapohoes Subsistence and Civilization, 1905. | Northern Cheyennes. |
| | Au 8, '05 | 1620.00 | | |
| | Aug , '05 | 1620.00 | | |
| St. Mary's Boarding, Quapaw Agency, I. T. | Feb. 11, '05 | 250.00 | Support of Quapaws Education.. | Quapaws. |
| | Apr. 12, '05 | 125.00 | | |
| | Aug. 4, '05 | 125.00 | | |

Treaty..... $66,810.57
Trust..... 23,936.52

| Name of school. | Date of payments. | Amount of payments. | Name of fund. | Name of tribe. |
|---|---|---|---|---|
| St. John's Boarding, Hominy Creek, Okla. | May 11, '06 | $1093.75 | | |
| | May 11, '06 | 1146.05 | Interest on Osage Fund..... | Osages. |
| | May 12, '06 | 1067.70 | | |
| | Jul. 17, '06 | 1093.75 | | |
| St. Louis Boarding, Pawhuska, Okla. | May 11, '06 | 3421.64 | Interest on Osage Fund..... | Osages. |
| | May 12, '06 | 1938.54 | | |
| | Jul. 18, '06 | 2044.30 | Fulfilling Treaties with Osages. | |
| | May 11, '06 | 189.52 | | |
| St. Joseph's Industrial, Green Bay, Wis. | May 17, '06 | 3474.90 | | |
| | May 17, '06 | 3453.65 | Interest on Menomonee Log Fund. | Menomonees. |
| | May 17, '06 | 3137.10 | | |
| | Jul. 11, '06 | 3856.55 | | |
| St. Mary's Boarding, Quapaw Agency, I. T. | Jun. 1, '06 | 375.00 | Support of Quapaws, Education. | Quapaws. |
| | Jul. 2, '06 | 125.00 | | |
| Holy Rosary, Pine Ridge, S. Dak. | Jun. 16, '06 | 5400.00 | Support of Sioux of different Tribes, Subsistence & Civilization, 1906. | |
| | Jun. 16, '06 | 5400.00 | | |
| | Jun. 16, '06 | 5400.00 | | |
| | Jul. 21, '06 | 5400.00 | Interest on Sioux Fund, Pine Ridge .....$2194. | Pine Ridge Sioux. |
| | | | Support of Sioux, etc., 1906 .....$3206. | |
| Immaculate Conception Mission, Crow Creek Agency, S. Dak. | Jun. 25, '06 | 864.00 | Support of Sioux, etc., 1906 .....$1868.83 | Crow Creek Sioux. |
| | Jun. 25, '06 | 938.83 | | |
| | Jun. 25, '06 | 918.00 | Education Sioux Nation..... $852.00 | |
| | Jul. 24, '06 | 950.93 | Interest on Sioux Fund, Crow Creek..... $113.66 | |
| | | | Support of Sioux, etc., 1906..... $837.27 | |

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| | | | | |
|---|---|---|---|---|
| St. Labres Mission, Tongue River, Mont. | Jul. 26, '06 | $1053.00 | Support of Northern Cheyennes and Arapahoes: Subsistence and Civilization, 1906. | Northern Cheyennes. |
| | Jul. 26, '06 | 1053.00 | | |
| | Jul. 26, '06 | 1053.00 | | |
| | Jul. 26, '06 | 1053.00 | | |
| Immaculate Conception Mission, Crow Creek Agency, S. Dak. | Aug. 1, '06 | 54.00 | Education Sioux Nation $48.00 | |
| | Aug. 1, '06 | 54.00 | Support of Sioux etc. 1906, 150.00 | |
| | Aug. 1, '06 | 54.00 | Interest in Sioux Fund, Lower Brule, 18.00. | |
| | Aug. 1, '06 | 54.00 | | |

Treaty..... $28,063.62
Trust..... 26,115.05

63 PLAINTIFF'S EXHIBIT No. 3.

Refer in reply to the following:
Finance.
15672/1907.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *February* 23, 1907.

Charles C. Binney, 703 North American Building, Philadelphia, Pennsylvania.

SIR: I am in receipt of your letter of the 14th instant, asking for further information in connection with the detailed statement furnished you on the 13th instant which showed the amount of each payment for the support of any sectarian school paid from Indian treaty or trust funds for the fiscal years 1896-7 to 1905-6, the name of the school, name of fund and of the tribe whose fund was used.

The questions you now ask, with the answer immediately after each, are as follows:

Q. Is the Grace Mission School mentioned in the statement for 1896-7, the same as Grace Howard Mission Boarding School, mentioned on page 11 of the Indian Commissioner's Report for 1895? A. Yes.

Q. Is the St. Louis Boarding School, mentioned in the statement for 1896-7, the same as the Pawhuska Boarding School, mentioned in the Indian Commissioner's Report for 1894, page 16, in that for 1895, page 12, and in that for 1896, page 16? A. Yes.

64 Q. Is the St. John's Boarding School at Gray Horse, mentioned in the statement for 1896-7, the same as St. John's Hominy Creek, mentioned in the Indian Commissioner's Report for 1896, page 16? A. Yes.

Q. Is St. Mary's Academy, mentioned in the statement for 1896 and 7, at Sacred Heart, the same as the Sacred Heart School, mentioned in the Indian Commissioner's Report for 1896, page 16? A. Yes.

Q. I find that my original question 6 should have covered the years 1894-5 and 1895-6. I must therefore ask for a tabulated statement for those years, similar to the statements contained in your letter of the 5th instant. A. Statements for 1895 and 1896 attached.

Very respectfully,

F. E. LEUPP, *Commissioner.*

WWMcC (0).

65 *Decree.*

Filed April 15, 1907.

In the Supreme Court of the District of Columbia.

Equity. No. 26271.

REUBEN QUICK BEAR, RALPH EAGLE FEATHER, and CHARLES TACKETT, on Behalf of Themselves and all Other Members of the Sioux Tribe of Indians of the Rosebud Agency, S. D., Plaintiffs,

*v.*

FRANCIS E. LEUPP, Commissioner of Indian Affairs; ETHAN ALLEN HITCHCOCK, Secretary of the Interior; LESLIE M. SHAW, Secretary of the Treasury; CHARLES H. TREAT, Treasurer of the United States, and ROBERT J. TRACEWELL, Comptroller of the Treasury, Defendants.

This case came on to be heard at this term upon the bill, the answer, and certain proofs consisting of replies made by the Commissioner of Indian Affairs to certain questions asked in behalf of the plaintiffs, and also of certain statements in the reports of the Commissioner of Indian Affairs for the years 1895 to 1906 inclusive, and was argued by counsel, and thereupon, upon consideration thereof, it is this 15th day of April, 1907, ordered, adjudged and decreed as follows: That an injunction issue against all of the defendants, and their present successors in office in the case of such of the said defendants as are no longer in office, perpetually restraining them *for* paying or authorizing the payment of, either by themselves or by any of their subordinate officers or agents whatever, any moneys of the Sioux treaty fund, referred to in the said bill and answer, appropriated for the uses of the Sioux tribe of Indians, to the Bureau of Catholic Indian Missions, at Washington, D. C., for the support, education, or maintenance of any Indian pupils of the said Sioux tribe, at the St. Francis Mission Boarding School on the Rosebud Reservation in the State of South Dakota, as provided in the contract referred to in the said bill and answer, and that the defendants be further restrained from drawing, countersigning and paying any warrants in favor of the said Bureau of Catholic Indian Missions, for the purpose aforesaid, payable out of the said Sioux treaty fund; and

66

It is further ordered, adjudged, and decreed that so much of the prayer of the said bill as asks that an injunction issue against the defendants restraining them from paying or authorizing the payment of any of the interest of the Sioux trust fund to the said Bureau of Catholic Indian Missions under the said contract, be refused; and

It is further ordered and adjudged that each party pay the respective costs by each incurred.

ASHLEY M. GOULD, *Justice.*

67 *Application for an Appeal by Plaintiffs.*

Filed April 15, 1907.

In the Supreme Court of the District of Columbia.

Equity. No. 26271.

REUBEN QUICK BEAR, RALPH EAGLE FEATHER, and CHARLES TACKETT, on Behalf of Themselves and all Other Members of the Sioux Tribe of Indians of the Rosebud Agency, S. D., Plaintiffs,

*v.*

FRANCIS E. LEUPP, Commissioner of Indian Affairs; ETHAN ALLEN HITCHCOCK, Secretary of the Interior; LESLIE M. SHAW, Secretary of the Treasury; CHARLES H. TREAT, Treasurer of the United States, and ROBERT J. TRACEWELL, Comptroller of the Treasury, Defendants.

Come now the plaintiffs, by their solicitor, Samuel M. Brosius, and give notice of and make application for an appeal to the Court of Appeals of the District of Columbia, from so much of the decree of this Honorable Court entered on the 15th day of April, 1907, as refuses that portion of the prayer of the plaintiffs' bill which asks that an injunction shall issue against the defendants, restraining them from paying or authorizing any payment of the interest of the Sioux trust fund to the Bureau of Catholic Indian Missions under the contract referred to in the said bill.

SAMUEL M. BROSIUS,
*Solicitor for Plaintiffs.*

68 Due service of the above application is hereby acknowledged this 15 day of April, 1907.

DANIEL W. BAKER,
*U. S. Attorney, D. C.*

Appeal allowed and bond for costs fixed at $100.

ASHLEY M. GOULD.

*Order for Amendment of Appeal.*

Filed April 19, 1907.

In the Supreme Court of the District of Columbia, the 19th Day of April, 1907.

Equity. No. 26271.

REUBEN QUICK BEAR ET AL., Plaintiffs,

*vs.*

FRANCIS E. LEUPP ET AL., Defendants.

The Clerk of said Court will amend the appeal already filed for the plaintiffs in this case by adding these words: and also from so

much of the said decree as imposes upon the plaintiffs any portion of the costs.

SAMUEL M. BROSIUS,
*Attorney for Plaintiffs.*

*Notice of Appeal by Defendants from Decree of April 15/07.*

Filed April 19, 1907.

In the Supreme Court of the District of Columbia.

Equity. No. 26271.

REUBEN QUICK BEAR ET AL., Complainants,
*vs.*
FRANCIS E. LEUPP ET AL., Defendants.

Now comes the defendants and pray an appeal to the
69 Court of Appeals from so much of the decree entered herein on the 15th day of April, 1907, as enjoins the said defendants from making any payments under the contract mentioned in these proceedings out of the Treaty Funds mentioned herein.

DANIEL W. BAKER,
*U. S. Att'y, Attorney for Defendants.*

*Stipulation.*

Filed April 19, 1907.

In the Supreme Court of the District of Columbia.

Equity. No. 26271.

REUBEN QUICK BEAR, RALPH EAGLE FEATHER, and CHARLES TACKETT, on Behalf of Themselves and all Other Members of the Sioux Tribe of Indians of the Rosebud Agency, S. D., Plaintiffs,
*v.*
FRANCIS E. LEUPP, Commissioner of Indian Affairs; ETHAN ALLEN HITCHCOCK, Secretary of the Interior; LESLIE M. SHAW, Secretary of the Treasury; CHARLES H. TREAT, Treasurer of the United States, and ROBERT J. TRACEWELL, Comptroller of the Treasury, Defendants.

It is hereby stipulated and agreed by and between the counsel representing the parties to this cause that the amount which was to have been paid from the Sioux treaty fund under the contract in regard to which this suit is brought is approximately $24,000.

It is further agreed that the reports of the Commissioner
70 of Indian Affairs for the years 1894 to 1904 inclusive shall be exhibits in this case, in order that among others certain portions of them may be treated as evidence, as follows:

| | | |
|---|---|---|
| 1894.. | Pages 16-18 | Government Aid to Contract Schools |
| 1895.. | " 10-13 | Government Aid to Contract Schools |
| 1896.. | " 14-17 | Contract School System |
| 1897.. | " 12-15 | Contract Schools |
| 1898.. | " 15-17 | Contract Schools |
| 1899.. | " 16-19 | Contract Schools |
| 1900.. | " 23-28 | Contract Schools |
| 1901.. | " 26-28 | Mission Schools |
| 1901.. | Page 327, lines 21-26 | Report of Osage Agent |
| 1902.. | Pages 39-40 | Mission Schools |
| | Page 294, lines 5-13 | Report of Osage Agent |
| 1903.. | Pages 22-24 | Mission Schools |
| | page 272, lines 10-12 | Report of Osage Agent |
| 1904.. | Pages 46-47 | Mission Schools |
| | Page 300, lines 8-10 | Report of Osage Agent |
| | " 371, lines 6-9 | Report of Superintendent of St. Joseph's School. |

SAMUEL M. BROSIUS,
*For Plaintiffs.*
DANIEL W. BAKER,
STUART McNAMARA,
*For Defendants.*

71 *Memorandum.*

April 19, 1907.—$100,—deposited by Complainant in lieu of appeal bond.

*Complainants' Designation.*

Filed April 20, 1907.

In the Supreme Court of the District of Columbia.

Equity. No. 26271.

QUICK BEAR ET AL., Plaintiffs,
*v.*
LEUPP ET AL., Defendants.

Papers to be included in record for Appeal.
1. The Bill.
2. The Answer.
3. Plaintiffs' exhibits, Nos. 1, 2 and 3.
4. The Decree.
5. The Stipulations, filed April 20, 1907.
6. The Plaintiffs' Appeal, with amendment.
7. The Defendants' note of appeal.

SAMUEL M. BROSIUS,
*Solicitor for Plaintiffs.*

STUART McNAMARA,
*Of Counsel for Def't.*

72 *Defendants' Designation.*

Filed April 20, 1907.

In the Supreme Court of the District of Columbia.

In Equity. No. 26271.

REUBEN QUICK BEAR ET AL., Complainants,
*vs.*
FRANCIS E. LEUPP, Commissioner of Indian Affairs, *et al.*, Defendants.

The Clerk of the Court will please use the designation of the record filed by the complainant herein as the designation of record adopted by defendants on their appeal from so much of the decree of April 15th 1907, as noted herein; the said appeal having been taken under the direction of the Attorney General of the United States and to be treated as an United States case.

DANIEL W. BAKER,
*United States Attorney in and for the District of Columbia, Sol. for Def'ts.*

73 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
*District of Columbia, ss:*

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 72, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copies of which are made part of this record, in cause No. 26271, In Equity, wherein Reuben Quick Bear, *et al.*, are Complainants, and Francis E. Leupp, Commissioner, &c., *et al.*, are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 9th day of May, A. D. 1907.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1786. Reuben Quick Bear *et al.*, appellants, *vs.* Francis E. Leupp, Commissioner of Indian Affairs *et al.*, and No. 1787, Francis E. Leupp, Commissioner of Indian Affairs, *et al.*, appellants, *vs.* Reuben Quick Bear *et al.* Court of Appeals, District of Columbia. Filed May 9, 1907. Henry W. Hodges, clerk.

TUESDAY, *May 21st, A. D.* 1907.

No. 1786.

REUBEN QUICK BEAR, RALPH EAGLE FEATHER, and CHARLES TACKETT, on Behalf of Themselves and All Other Members of the Sioux Tribe of Indians of the Rosebud Agency, S. D., Appellants,

*vs.*

FRANCIS E. LEUPP, Commissioner of Indian Affairs; ETHAN ALLEN HITCHCOCK, Secretary of the Interior; LESLIE M. SHAW, Secretary of the Treasury, *et al.*,

and

No. 1787.

FRANCIS E. LEUPP, Commissioner of Indian Affairs; ETHAN ALLEN HITCHCOCK, Secretary of the Interior; LESLIE M. SHAW, Secretary of the Treasury, *et al.*, Appellants,

*vs.*

REUBEN QUICK BEAR, RALPH EAGLE FEATHER, and CHARLES TACKETT, on Behalf of Themselves and All Other Members of the Sioux Tribe of Indians of the Rosebud Agency, S. D.

The retirement of Ethan Allen Hitchcock and Leslie M. Shaw and the appointment of James Rudolph Garfield and George Bruce Cortelyou as their successors in office having been suggested to the Court, It is upon motion of Mr. Stuart McNamara, of counsel, now here ordered by the Court that the said James Rudolph Garfield, Secretary of the Interior, and the said George Bruce Cortelyou, Secretary of the Treasury, be, and they are hereby, made parties herein in lieu of the said Hitchcock and Shaw retired.

Per MR. CHIEF JUSTICE SHEPARD,
May 21, 1907.

TUESDAY, *May 21st, A. D.* 1907.

No. 1786.

REUBEN QUICK BEAR, RALPH EAGLE FEATHER, and CHARLES TACKETT, on Behalf of Themselves and All Other Members of the Sioux Tribe of Indians of the Rosebud Agency, S. D., Appellants,

*vs.*

FRANCIS E. LEUPP, Commissioner of Indian Affairs; JAMES RUDOLPH GARFIELD, Secretary of the Interior; GEORGE BRUCE CORTELYOU, Secretary of the Treasury, *et al.*,

and

No. 1787.

FRANCIS E. LEUPP, Commissioner of Indian Affairs; JAMES RUDOLPH GARFIELD, Secretary of the Interior; GEORGE BRUCE CORTELYOU, Secretary of the Treasury, *et al.*, Appellants,

*vs.*

REUBEN QUICK BEAR, RALPH EAGLE FEATHER, and CHARLES TACKETT, on Behalf of Themselves and All Other Members of the Sioux Tribe of Indians of the Rosebud Agency, S. D.

The argument in the above entitled cause was commenced by Mr. C. C. Binney, attorney for the appellants in No. 1786 and for the appellees in No. 1787, and was continued by Messrs. E. H. Gans and Stuart McNamara, attorneys for the appellees in No. 1786 and for the appellants in No. 1787, and was concluded by Mr. C. C. Binney, attorney for the appellants in No. 1786 and for the appellees in No. 1787.

On motion, the appellants in No. 1786 and the appellees in No. 1787 are allowed to file supplemental brief herein if so advised.

In the Court of Appeals of the District of Columbia.

No. 1786.

REUBEN QUICK BEAR ET AL.

*vs.*

FRANCIS E. LEUPP ET AL.

and

No. 1787.

FRANCIS E. LEUPP ET AL.

*vs.*

REUBEN QUICK BEAR ET AL.

*Stipulation.*

It is hereby stipulated by and between the undersigned as counsel for the appellees and appellants respectively in both the above entitled causes that the above entitled causes be and they hereby are sub-

mitted on the records and briefs to the Chief Justice and Justice Wright, the remaining justices who sat in the hearing of these cases, and that the determination in the said causes may be announced and the same shall stand as the opinion of the said Court.

CHARLES C. BINNEY,
*Counsel for Appellant in No.* 1786,
*and for Appellee in No.* 1787.
DANIEL W. BAKER, *U. S. Att'y.*
STUART McNAMARA,
*Ass't U. S. Att'y.*
EDGAR H. GANS,
*Counsel for Appellee in No.* 1786,
*and for Appellant in No.* 1787.

Nov. 18, 1907.

(Endorsed:) Nos. 1786 and 1787. Reuben Quick Bear *et al.*, Appellants, *v.* Francis E. Leupp *et al.* and Francis E. Leupp *et al.*, Appellants, *v.* Reuben Quick Bear *et al.* Stipulation to submit on record and briefs to the Chief Justice and Justice Wright. Court of Appeals, District of Columbia. Filed Nov. 18, 1907. Henry W. Hodges, Clerk.

No. 1786.

REUBEN QUICK BEAR, RALPH EAGLE FEATHER, and CHARLES TACKETT, on Behalf of Themselves and All Other Members of the Sioux Tribe of Indians of the Rosebud Agency, S. D., Appellants,

*vs.*

FRANCIS E. LEUPP, Commissioner of Indian Affairs; JAMES RUDOLPH GARFIELD, Secretary of the Interior; GEORGE BRUCE CORTELYOU, Secretary of the Treasury, *et al.*,

and

No. 1787.

FRANCIS E. LEU Commissioner of Indian Affairs; JAMES RUDOLPH GARFIELD, Secretary of the Interior; GEORGE BRUCE CORTELYOU, Secretary of the Treasury, Appellants,

*vs.*

REUBEN QUICK BEAR, RALPH EAGLE FEATHER, and CHARLES TACKETT, on Behalf of Themselves and All Other Members of the Sioux Tribe of Indians of the Rosebud Agency, S. D.

*Opinion.*

Mr. Justice WRIGHT, of the Supreme Court of the District of Columbia, who sat with the court in the hearing of the case in the place of Mr. Justice ROBB, delivered the opinion of the Court:

For many years prior to 1905 the Government of the United States had made, with mission schools of various denominations, annual contracts for the education of Indian children. Amongst

these was a sectarian school maintained on the Rosebud Reservation by the Bureau of Catholic Indian Missions, a corporation of the State of Maryland.

In June, 1905, this bureau advised the Commissioner of Indian Affairs that it was prepared to care for and to educate Indian pupils during the fiscal year 1906, and requested a renewal of its contract of the preceding year on the same terms and conditions. In March, 1906, 212 members of the Sioux tribe who desired that their children be educated in a Catholic school petitioned the respondents to that end, and particularly that the contract requested by the bureau be entered into on their behalfs; others of the tribe objected and protested; the Commissioner of Indian Affairs made a contract with the Bureau of Catholic Indian Missions for the care, maintenance, and education during the year 1906 of 250 Sioux pupils at St. Francis Mission School on the Rosebud Reservation at the cost of $27,000. The Secretary of the Interior approved the contract, and there were set apart for payment the sums of $24,000 from the "Sioux Treaty Fund," and $3,000 from the income of the "Sioux Trust Fund" the complainants, on behalf of themselves and of all the members of the Sioux tribe, instituted this suit, to enjoin the application of the money to the purpose proposed; the learned justice of the Supreme Court of the District of Columbia, who heard the matter below, was of opinion that an injunction should go against the expenditure of the $24,000 from the "Treaty Fund" and be denied as to the $3,000 from the "Trust Fund," and it was so decreed; both parties have appealed.

The complainants put forward that at the time of the contract the Secretary of the Interior had been deprived by certain legislative expressions (found for the most part in the annual Indian appropriation acts) of all power to make or to authorize a contract for the education of any Indian pupil in any sectarian school; and this is the question.

The necessary outcome of the case will evolve itself from the understanding of the nature and character of the "funds" involved and an analysis of the appropriation acts concerned more readily than it can be made to appear from a discussion of the various arguments put forward by the respective parties.

*Sioux Treaty Fund.*

By the Sioux Treaty of 1868 (15 St., 635) the United States agreed that for a term of twenty years they would provide for every thirty children of the Sioux tribe, a house and a teacher competent to teach the elementary branches of an English education. In 1877 (19 St., 254-5) the United States further agreed to furnish to the Sioux "schools and instruction in mechanical and agricultural arts as provided by the treaty of 1868."

By the act of March 2, 1889 (25 St., 894), that article of the treaty of 1868 which provided for schools and for education was continued in force for a second term of twenty years. In pursuance and dis-

charge of the obligations created by this treaty the Indian Appropriation Act of 1905 (33 St., 1048-55) appropriating for the fiscal year 1906 provided amongst other things "For subsistence of the Sioux, and for purposes of their civilization, as per agreement ratified by act of Congress approved February twenty-eight, eighteen hundred and seventy-seven, seven hundred thousand dollars. —— ——.

"For support and maintenance of day and industrial schools, including erection and repairs of school buildings, in accordance with article seven of the treaty of April twenty-ninth, eighteen hundred and sixty eight, which article is continued in force for twenty years by section seventeen of the Act of March second eighteen hundred and eighty-nine, two hundred and twenty-five thousand dollars."

The fund thus set apart for fulfillment of treaty obligations is the "Sioux Treaty Fund," out of which the $24,000, *supra*, has been set apart. In this connection it is appropriate to observe that of the tribal income applicable to education the proportion for application amongst the 212 petitioners was $33,550.35 (Rec. p. 28), a sum in excess of the $27,000, involved by the contract at bar.

*Sioux Trust Fund.*

In 1889 (25 St., 888-895) in consideration of the relinquishment of the Indian title to lands in Dakota and for other reasons, Congress provided "there shall be set apart, out of any money in the Treasury not otherwise appropriated, the sum of three millions of dollars, which said sum shall be deposited in the Treasury of the United States to the credit of the Sioux Nation of Indians as a permanent fund, the interest of which, at five per centum per annum, shall be appropriated, under the direction of the Secretary of the Interior, to the use of the Indians, &c." This is the "Sioux Trust Fund" out of the income of which the $3,000 *supra*, has been set apart.

With respect to each and to both of these funds, it is to be observed that their creation by Congress has made public money Indian money; in one instance Congress has paid a treaty debt, in the other paid a debt for lands and the like; the money has changed owners; what had been money of the public in the Treasury of the United States is now money of the Indians in the Treasury. So that in its expenditure the Secretary of the Interior is laying out money of the Sioux tribe of Indians, not money to which the public has any longer even the most slender claim of title or proprietorship. This distinction is vital to the case, because if Congress has lain upon the Secretary a limitation or restriction concerning only the purposes to which money of the public may be applied, such a limitation can not readily have application to money of the Indians.

Further, it is to be recognized that the United States, not satisfied that its moral duty of promoting the civilization and education of Indians was fully discharged by according to them the mere benefits to which it was bound and obligated by the Sioux treaty of 1868, at once set out upon a broader and more generous policy; that of ex-

pending, in addition to what the treaty required it to expend, sums for the advancement of Indian education which it was not required by any law or any treaty to expend.

In 1870 (16 St., 335, 359), entirely aside from treaty obligations, was appropriated $100,000 "for the support of industrial and other schools among the Indian tribes not otherwise provided for, to be expended under the direction of the Secretary of the Interior." Appropriations of this nature have continued until the present, and contracts have been annually made by the Secretary with mission schools of various denominations, payable out of such gratuitous appropriations; so far as tribes having treaty stipulations were concerned, annual contracts might be and have been paid in part out of "Treaty Funds;" but respecting education for non-treaty tribes, education under annual contracts and all other education must be paid for from the gratuitous appropriations, or not at all; there was no other money.

These gratuitous appropriations are in no wise a disposition of Indian funds for Indian education, but are clear devotions of public money to the cause of Indian education, gratis.

We propose now to point out that in each appropriation act involved in the complainants' position, Congress has not only fulfilled in detail the several treaty obligations relating to education, but also has made a distinct and separate appropriation of the other nature; an appropriation to which it was not obliged; that it need not have made; a gratuitous appropriation of public money to advance the cause of Indian education; and it seems to us that the outcome of the matter will then begin to appear clear.

It is agreed that prior to 1895 the secretary's power to contract with sectarian schools for Indian education existed; but opposition to these contracts having developed, the Indian Appropriation Act of 1894 provided "that the expenditure of money appropriated for school purposes under this act, shall be at all times under the supervision and direction of the Commissioner for Indian Affairs and in all respects in conformity with such conditions, rules, and regulations as to the conduct of and methods of instruction and expenditure of money as may, from time to time, be prescribed by him, subject to the approval of the Secretary of the Interior.

"Provided, That the Secretary of the Interior is hereby directed to inquire into and investigate the propriety of discontinuing contract schools and whether, in his judgment, the same can be done without detriment to the education of Indian children, and that he submit to Congress, at the next session, the result of such investigation, including an estimate of the annual cost, if any, of substituting Government schools for contract schools, together with such recommendations as he may deem proper."

The Secretary reported, recommending that contract schools "should be decreased at the rate of not less than twenty per cent. a year."

The Indian Appropriation Act of 1895 (28 St., 888) deals with and provides for many subjects under separate and appropriate headings. Upon page 879 appears the heading "Fulfilling Treaty Stipu-

lations with, and Support of, Indian Tribes," and under that particular heading, amongst other items, is the following:

"For support and maintenance of day and industrial schools, including purchase, erection, and repairs of school buildings, in accordance with article seven of the Treaty of April twenty-ninth, eighteen hundred and sixty-eight, which article is continued in force for twenty years by section seventeen of the Act of March second, eighteen hundred and eighty-nine, seventy-five thousand dollars.

Upon page 903, some thirty pages removed from the first, appears the distinct heading, "Support of Schools;" and thereunder is found: "For support of Indian day and industrial schools, and for other educational purposes * * * one million one hundred and sixty-four thousand three hundred and fifty dollars. * * * Provided, that the Secretary of the Interior shall make contracts, but only with present contract schools, for the education of Indian pupils during the fiscal year ending June thirtieth, eighteen hundred and ninety-six, to an extent not exceeding eighty per centum of the amount so used for the fiscal year eighteen hundred and ninety-five, and the Government shall, as early as practicable, make provision for the education of Indian children in Government schools."

In the Indian Appropriation Act of 1896, under the heading "Fulfilling Treaty Stipulations with, and Support of, Indian Tribes" (29 St., 333-4) appear the items, "For subsistence of the Sioux and for purposes of their civilization as per agreement * * * one million dollars," and "For support and maintenance of day and industrial schools, including purchase, erection, and repairs of school buildings, in accordance with article seven of the treaty * * * twenty-five thousand dollars."

On page 345, again appears the same distinct heading "Support of Schools," and under it "For support of Indian day and industrial schools, and for other educational purposes not hereinafter provided for * * * one million two hundred and thirty-five thousand dollars. * * * And it is hereby declared to be the settled policy of the Government to hereafter make no appropriation whatever for education in any sectarian school; provided, that the Secretary of the Interior may make contracts with contract schools apportioning as near as may be the amount so contracted for among schools of various denominations for the education of Indian pupils during fiscal year eighteen hundred and ninety-seven, but shall only make such contracts at places where non-sectarian schools can not be provided for such Indian children and to an amount not exceeding fifty per centum of the amount so used for the fiscal year eighteen hundred and ninety-five."

Following on pp. 333-4 are twenty-one distinct items specifically providing for as many non-sectarian schools and one for a sectarian to an aggregate of $920,965.

The Appropriation Act of 1897 (30 St., 66 & 79), presents the two distinct headings as in the act of 1896; under "Fulfilling Treaty Stipulations" appear the items which are necessary to fulfillment including those for schools and education, and under "Support of Schools" appears "For support of Indian day and industrial

schools, and for other educational purposes not hereinafter provided for * * * $1,200,000; * * * and it is hereby declared to be the settled policy of the Government to hereafter make no appropriation whatever for education in any sectarian school; provided, that the Secretary of the Interior may make contracts with contract schools apportioning as near as may be the amount so contracted for among schools of various denominations for the education of Indian pupils during the fiscal year eighteen hundred and ninety-eight, but shall only make such contracts at places where non-sectarian schools can not be provided for such Indian children and to an amount not exceeding forty per centum of the amount so used for the fiscal year eighteen hundred and ninety-five * * *"

Thereafter, as in the act of 1896, follow specific provisions for schools to the number of 25, including the one sectarian school, in the aggregate sum of $1,162,771.30. Let it be remembered that all appropriations under the heading "Support of Schools" are the gratuitous, as for convenience, we have before designated them.

The act of 1898 (30 St.) carries, on page 575, the "Fulfilling Treaty Stipulations" heading, together with its items, and on page 587 "Support of Schools" "For support of Indian day and industrial schools, and for other educational purposes not hereinafter provided for, * * * $1,000,000. Provided, That the Secretary of the Interior may make contracts with contract schools, apportioning as near as may be the amount so contracted for among schools of various denominations for the education of Indian pupils during the fiscal year 1899, but shall only make such contracts at such places where non-sectarian schools can not be provided for such Indian children, and to an amount not exceeding thirty per centum of the amount so used for the fiscal year eighteen hundred and ninety-five."

The appropriations for school buildings and for the support of particular schools were substantially the same as in the act of 1896.

The act of 1899 (30 St.) carries the two headings, the first on page 927, the second on p. 942, as follows:

*"Support of Schools."*

"For support of Indian day and industrial schools, and for other educational purposes not hereinafter provided for, * * * $1,100,000. Provided, That the Secretary of the Interior may make contracts with contract schools apportioning as near as may be the amount so contracted for among schools of various denominations for the education of Indian pupils during the fiscal year 1900, but shall only make such contracts at places where non-sectarian schools can not be provided for such Indian children, and to an amount not exceeding fifteen per cent. of the amount so used for the fiscal year eighteen hundred and ninety-five, the same to be divided proportionately among the said several contract schools, this being the final appropriation for sectarian schools."

The act of 1900 (31 St.) at pages 225 and 242, carries the same two distinct headings, the second "Support of Schools," "For support

of Indian day and industrial schools, and for other educational purposes not hereinafter provided for, $1,200,000," followed by the specific appropriations for particular schools, none of which is sectarian.

Such is the legislation upon which the position of the complainants depends. The respondents claim that the restrictions and limitations, being found only in connection with the general item under the heading "Support of Schools," apply only to the gratuitous appropriation carried by that item, and not to items found under the distinct heading "Fulfilling Treaty Stipulations." While we have neither been pointed to, nor have we come upon anything in the books which reaches the particular question, yet all the reasons that seem forceful draw our minds toward the latter contention.

As heretofore pointed out, the appropriations found under the heading "Support of Schools" are the gratuitous appropriations of public money; appropriations primarily devoted to the cause of Indian education. The items under the other heading are obligatory appropriations, primarily devoted to the payment of contractual obligations due the Indians, and only secondarily applied to education by him whom Congress has selected to dispense the trust.

While we of course, recognize the continuing power of Congress to legislate concerning appropriations for Indians, yet in the absence of further legislation concerning the particular funds involved at bar, the situation may be paralleled by conceiving an instance of the education of a *cestui que trust* through application by the trustee of a trust fund created for that purpose. Once a trust fund be created and its use declared, the trustee is but the medium for its application in the particular manner. It is not his function to attach limitations or restrictions of his own. If he be so beneficent as to contribute of his own personal funds to the same end, this he may do under any limitations or conditions that please him; but it is not to be said that they attach, also, to the trust fund, nor is it likely for him to intend that they should. Under the existing legislation the position of the United States with respect to the Indian "funds" is practically that of a trustee; with respect to the gratuitous appropriations for "Support of Schools," that of a voluntary donor, so that it may well be that a limitation can attach to the use of the gift money without attaching to the trust money.

This difference in the nature and character of the two funds was sufficient, not only to cause Congress to provide for them separately, although ultimately they were to be expended to the same end, education, but also to entitle them separately, differently, and distinctly. This consideration is significant and its significance must be recognized; it establishes that Congress regarded treaty obligations as distinct from school gratuities. If this be accurate, then it is likely that a restriction attached to the disposition of the gratuity, found only in juxtaposition with the very words creating the gratuity, was intended to apply only to the gratuity.

It is argued by the complainants that the provision "and it is hereby declared to be the settled policy of the Government to hereafter make no appropriation whatever for education in any sectarian

school," found in the acts of 1896 and 1897, is a distinct declaration of a Governmental policy which controls the action of the Secretary as thoroughly as would a direct legislative prohibition. If not impossible, it is at least difficult to accord to this phraseology the effect of a declaration of permanent policy in view of the consideration that the so-called policy announced in one year is reversed the next by directly appropriating for sectarian schools, by expressly authorizing the Secretary to contract with them, and by specifically providing for at least one such, as the succeeding appropriation provides. Although the act of 1896 declares it to be the "settled policy of the Government to hereafter make no appropriation whatever for education in any sectarian school," yet such appropriations were, nevertheless, made in 1897; and although the act of 1897 declares a policy in identical language with that of 1896, yet the act of 1898 again overrides by declaration by again appropriating for sectarian schools. If the declaration of 1896 was then intended as announcing a permanent policy to control the future, Congress in 1897 in its wisdom saw the necessity of departing from it, and wiped it out by appropriating in that year; and if the declaration of 1897 was currently intended as announcing a permanent policy for the future, it in turn was wiped out by appropriating in 1898; so that as the matter appears these declarations both stand nullified; and there remains nothing declarative of policy save in the act of 1898 the expression, "this being the final appropriation for sectarian schools."

If these acts be all taken together it is perfectly manifest that Congress either intended in each year a permanent policy and deliberately and understandingly postponed it the next; or what is more likely, that Congress never intended that the policy proclaimed should become operative or effective until after the appropriation of 1898. And by providing in 1896 in connection with the gratuitous appropriation that the secretary might expend 80 per cent. of the sum spent in 1895, by providing in 1897 in connection with the gratuitous appropriation that he might expend 50 per cent. of that sum, by providing in 1898, in connection with the gratuitous appropriation, that he might expend 40 per cent. In 1898 30 per cent., in 1899 15 per cent., "this being the final appropriation for sectarian schools," thus gradually eliminating in connection with the gratuity what he was directly authorized to expend out of the gratuity, it seems equally manifest that Congress considered the limitation as reaching only to the gratuity.

But for the sake of the argument, let it be assumed that the language quoted does announce a definite, fixed, and permanent policy, yet what manner of policy is it that is declared? Is it the policy of depriving a religious Indian of the liberty of educating his children in a school of his own sect at the cost of his own money? Or is it the policy of declining to educate an Indian in religious schools gratuitously, at the cost of public donations which are not his and to which he has no claim as matter of right?

Well may it be said that as to national voluntary contributions out of the public funds to the cause of Indian education the taxpayers of the United States, who are adherents to divers creeds and to none,

may claim to be consulted. The injustice to people of one creed in having their money applied to the encouragement and strengthening of schools which teach another creed, or in the farming out by the Government of its education of Indians to a particular sect, is manifest, and doubtless impressed Congress with a determination that whatever gratuitous education it afforded should not be in creeds, nor paid for to this, that, or the other sect as such. But the philanthropy and sense of justice of the same taxpayer is sufficient to enable him ungrudgingly to accord to the Indian the same right and privilege of free choice of schools that he would accord to his neighbor, so long as the money which pays is no longer that of the taxpayer, but gotten to be that of the other.

The first amendment to the Constitution, by the clause "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof," has shackled the hands of legislation against aid or hindrance to creeds and faiths; so be it that they live and flourish, die or wither; they go untouched, unmoved, unstirred by law; against them it speaks not, nor in their favor; in their field each human creature stands unlawed—a sovereign; supreme, to turn which way he will; not only the white and black, but the red man as well; to prohibit an Indian from a particular faith, or from rearing his children in its schools is as far outside the law as in case of a Caucasian; and this is the result if Indian education in a sectarian school of his own choice paid for by his own money is to be prohibited and the right denied. The "Treaty" and "Trust" moneys are the only moneys that the Indians can lay claim to as matter of right; the only sums on which they are entitled to rely as theirs for education; and while these moneys are not delivered to them in hand, yet the money must not only be provided, but be expended for their benefit, and in part for their education; it seems inconceivable that Congress shall have intended to prohibit them from receiving religious education at their own cost if they desire it; such an intent would be one to "prohibit the free exercise of religion" amongst the Indians, and such would be the effect of the construction for which the complainants contend.

We are, therefore, of the opinion that the so-called declaration of policy, the limitations and restrictions found in the various appropriation acts under the title, "Support of Schools," concern only moneys appropriated under that particular title; that is to say, the gratuitous appropriations of public money to the cause of Indian education, and have nothing to do with the expenditure of the Indian "Treaty Fund," nor with the proceeds of the Indian "Trust Fund."

All parties agree that between the two "Funds" there is no distinction so far as the effort of the complainants' bill is concerned, nor does any distinction occur to us in this regard; the result of the case will, therefore, be the same respecting each. The decree is affirmed in so far as it denied an injunction respecting the income of the Trust Fund; in so far as it enjoined the payment from the "Treaty Fund," it must be reversed, and the cause is remanded with directions to dismiss the bill at the cost of the complainants. And it is so ordered.

FRIDAY, *November 29th*, A. D. 1907.

October Term, 1907.

No. 1786.

REUBEN QUICK BEAR, RALPH EAGLE FEATHER, and CHARLES TACKETT, on Behalf of Themselves and All Other Members of the Sioux Tribe of Indians of the Rosebud Agency, S. D., Appellants,

*vs.*

FRANCIS E. LEUPP, Commissioner of Indian Affairs; JAMES RUDOLPH GARFIELD, Secretary of the Interior; GEORGE BRUCE CORTELYOU, Secretary of the Treasury, *et al.*,

and

No. 1787.

FRANCIS E. LEUPP, Commissioner of Indian Affairs; JAMES RUDOLPH GARFIELD, Secretary of the Interior; GEORGE BRUCE CORTELYOU, Secretary of the Treasury, *et al.*, Appellants,

*vs.*

REUBEN QUICK BEAR, RALPH EAGLE FEATHER, and CHARLES TACKETT, on Behalf of Themselves and All Other Members of the Sioux Tribe of Indians of the Rosebud Agency, S. D.

Appeals from the Supreme Court of the District of Columbia.

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia, on appeal and cross appeal, and was argued by counsel. On consideration whereof, It is now here ordered, adjudged and decreed by this Court that the decree of the said Supreme Court in this cause, be, and the same is hereby, affirmed in so far as it denied an injunction respecting the income of the "Trust Fund;" in so far as it enjoined the payment from the "Treaty Fund" it must be reversed, and the cause remanded with directions to dismiss the bill at the cost of the complainants.

Per MR. JUSTICE WRIGHT,
November 29, 1907.

FRIDAY, *December* 13*th*, A. D. 1907.

No. 1786.

REUBEN QUICK BEAR, RALPH EAGLE FEATHER, and CHARLES TACKETT, on Behalf of Themselves and All Other Members of the Sioux Tribe of Indians of the Rosebud Agency, S. D., Appellants,

*vs.*

FRANCIS E. LEUPP, Commissioner of Indian Affairs; JAMES RUDOLPH GARFIELD, Secretary of the Interior; GEORGE BRUCE CORTELYOU, Secretary of the Treasury, *et al.*,

and

No. 1787.

FRANCIS E. LEUPP, Commissioner of Indian Affairs; JAMES RUDOLPH GARFIELD, Secretary of the Interior; GEORGE BRUCE CORTELYOU, Secretary of the Treasury, *et al.*, Appellants,

*vs.*

REUBEN QUICK BEAR, RALPH EAGLE FEATHER, and CHARLES TACKETT, on Behalf of Themselves and All Other Members of the Sioux Tribe of Indians of the Rosebud Agency, S. D.

On motion of Mr. E. C. Brandenburg, on behalf of counsel for the appellants in No. 1786, and for the appellees in No. 1787, It is ordered by the Court that said appellants in No. 1786 and said appellees in No. 1787, be allowed an appeal to the Supreme Court of the United States, and the bond for costs is fixed at the sum of three hundred dollars. And it is further ordered that the mandate in said cause, be and the same is hereby, stayed until further order.

(*Bond on Appeal.*)

Know all men by these presents, That we, Reuben Quick Bear, Ralph Eagle Feather and Charles Tackett, on behalf of ourselves and all other members of the Sioux Tribe of Indians, of the Rosebud Agency, S. D. as principal-, and the American Surety Company of New York, a corporation, organized and existing under the laws of the State of New York, as suret-, are held and firmly bound unto Francis E. Leupp, Commissioner of Indian Affairs Ethan Allen Hitchcock, Secretary of the Interior, Leslie M. Shaw, Secretary of the Treasury, Charles H. Treat, Treasurer of the United States and Robert J. Tracewell, Comptroller of the Treasury, in the full and just sum of Three hundred ($300.00) dollars, to be paid to the said Francis E. Leupp, *et al.*, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this sixth day of January, in the year of our Lord one thousand nine hundred and eight.

Whereas, lately at a Court of Appeals of the District of Columbia in a suit depending in said Court, between Reuben Quick Bear, Ralph Eagle Feather and Charles Tackett, on behalf of themselves and all other members of the Sioux Tribe of Indians of the Rosebud Agency, S. D., against Francis E. Leupp, Commissioner of Indian Affairs, Ethan Allen Hitchcock, Secretary of the Interior, Leslie M. Shaw, Secretary of the Treasury, Charles H. Treat, Treasurer of the United States and Robert J. Tracewell, Comptroller of the Treasury, a decree was rendered against the said Reuben Quick Bear, *et al.* and the said Reuben Quick Bear, *et al.* having prayed and obtained an appeal to the Supreme Court of the United States to reverse the decree in the aforesaid suit, and a citation directed to the said Francis E. Leupp, *et al.* citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof;

Now, the condition of the above obligation is such, That if the said Reuben Quick Bear, *et al.* shall prosecute said appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

AMERICAN SURETY COMPANY OF NEW YORK,
By A. L. ADAMS, [SEAL.]
*Resident Vice-President.*

[Seal of American Surety Company of New York.]

Attest:

L. BERT NYE, [SEAL.]
*Resident Assistant Secretary.*

Sealed and delivered in presence of—

CLAUDE B. BROWN.
W. W. HOPKINS.

Approved by—

SETH SHEPARD,
*Chief Justice Court of Appeals of the District of Columbia.*

[Endorsed:] No. 1786 & 1787. Reuben Quick Bear *et al.*, Appellants, *vs.* Francis E. Leupp, Com'r of Indian Affairs *et al.* and Francis E. Leupp, Com'r of Indian Affairs *et al.*, Appellants, *vs.* Reuben Quick Bear *et al.* Bond on Appeal to the Supreme Court of the United States. Court of Appeals, District of Columbia. Filed Jan. 6, 1908. Henry W. Hodges, Clerk.

MONDAY, *January 6th, A. D.* 1908.

No. 1786.

REUBEN QUICK BEAR, RALPH EAGLE FEATHER, and CHARLES TACKETT, on Behalf of Themselves and All Other Members of the Sioux Tribe of Indians of the Rosebud Agency, S. D., Appellants,

*vs.*

FRANCIS E. LEUPP, Commissioner of Indian Affairs; JAMES RUDOLPH GARFIELD, Secretary of the Interior; GEORGE BRUCE CORTELYOU, Secretary of the Treasury, *et al.*,

and

No. 1787.

FRANCIS E. LEUPP, Commissioner of Indian Affairs; JAMES RUDOLPH GARFIELD, Secretary of the Interior; GEORGE BRUCE CORTELYOU, Secretary of the Treasury, *et al.*, Appellants,

*vs.*

REUBEN QUICK BEAR, RALPH EAGLE FEATHER, and CHARLES TACKETT, on Behalf of Themselves and All Other Members of the Sioux Tribe of Indians of the Rosebud Agency, S. D.

On motion of Mr. Stuart McNamara, of counsel for the appellees in No. 1786 and for the appellants in No. 1787, the mandate in the above entitled causes is ordered to issue forthwith.

UNITED STATES OF AMERICA, *ss:*

To Francis E. Leupp, Commissioner of Indian Affairs; James Rudolph Garfield, Secretary of the Interior; George Bruce Cortelyou, Secretary of the Treasury, *et al.*, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal, filed in the Clerk's Office of the Court of Appeals of the District of Columbia, wherein Reuben Quickbear, Ralph Eagle Feather, and Charles Tackett, on behalf of themselves and all other members of the Sioux Tribe of Indians of the Rosebud Agency, S. D., are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the appellants, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Seth Shepard, Chief Justice of the Court of Appeals of the District of Columbia, this 7th day of January, in the year of our Lord one thousand nine hundred and eight.

SETH SHEPARD,
*Chief Justice of the Court of Appeals of the District of Columbia.*

Service accepted Jan'y 7, 1908.
DANIEL W. BAKER,
*U. S. Attorney.*

[Endorsed:] Court of Appeals, District of Columbia. Filed Jan. 7, 1908. Henry W. Hodges, clerk.

Court of Appeals of the District of Columbia.

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 63, inclusive, contain a true copy of the transcript of record and proceedings of said Court of Appeals in the case of Reuben Quick Bear, Ralph Eagle Feather and Charles Tackett, on behalf of themselves and all other members of the Sioux Tribe of Indians of the Rosebud Agency, S. D., appellants, *vs.* Francis E. Leupp, Commissioner of Indian Affairs; James Rudolph Garfield, Secretary of the Interior; George Bruce Cortelyou, Secretary of the Treasury *et al.*, No. 1786, and Francis E. Leupp, Commissioner of Indian Affairs; James Rudolph Garfield, Secretary of the Interior; George Bruce Cortelyou, Secretary of the Treasury *et al.*, appellants, *vs.* Reuben Quick Bear, Ralph Eagle Feather and Charles Tackett, on behalf of themselves and all other members of the Sioux tribe of Indians of the Rosebud Agency, S. D., No. 1787, January Term, 1908, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this 13th day of January, A. D. 1908.

[Seal Court of Appeals, District of Columbia.]

HENRY W. HODGES,
*Clerk of the Court of Appeals of the District of Columbia.*

Endorsed on cover: File No. 20,972. District of Columbia, court of appeals. Term No. 569. Reuben Quickbear, Ralph Eagle Feather *et al.*, appellants, *vs.* Francis E. Leupp, Commissioner of Indian Affairs; James Rudolph Garfield, Secretary of the Interior, *et al.* Filed January 15th, 1908. File No. 20,972.

REUBEN QUICK BEAR, RALPH EAGLE FEATHER and CHARLES TACKETT, on behalf of themselves and all other members of the Sioux Tribe of Indians of the Rosebud Agency, S. D.
*Appellants,*

*vs.*

FRANCIS E. LEUPP, Commissioner of Indian Affairs; ETHAN ALLEN HITCHCOCK, Secretary of the Interior; LESLIE M. SHAW, Secretary of the Treasury; CHARLES H. TREAT, Treasurer of the United States, and ROBERT J. TRACEWELL, Comptroller of the Treasury,
*Appellees.*

IN THE

# Supreme Court

OF THE

# United States.

OCTOBER TERM, 1907.

No. 569.

## Motion to Advance Argument, and Hearing of Above Case.

The appellees in the above entitled case respectfully move the Court to advance the argument and hearing of said case, so that the same may be heard at this term of Court.

A brief statement of the case is as follows:

1.

The Government of the United States is in possession of two funds belonging to the Sioux Indians; one is called the "Sioux Trust Fund" and the other the "Sioux Treaty Fund." On March 2, 1889, the Act of Congress of 1889, chapter 465, was approved. This was entitled "An Act to divide a portion of the reservation of the Sioux nation of Indians in Dakota into separate reservations, and to secure the relinquishment of the Indian Tribe to the remainder." Under this Act, the Indians made certain cessions of land, and in partial consideration therefor, it was provided in Section 17 of the Act, as follows:

> "And in addition thereto, there shall be set apart out of any sum in the Treasury not otherwise appropriated, the sum of three million dollars, which said sum shall be deposited in the Treasury of the United States to the credit of the Sioux Nation of Indians as a permanent fund, the interest on which at five per cent. per annum shall be appropriated under the direction of the Secretary of the Interior to the use of the Indians receiving rations and annuities upon the reservations created by this act in proportion to the number that shall so receive rations and annuities at the time that this takes effect, as follows: One-half of said interest shall be so expended for the promotion of industrial and other suitable education among the said Indians, and the other half for such purposes, including reasonable cash payments per capita, as in the discretion of such Secretary, shall, from time to time, most contribute to the advancement of said Indians in civilization and self-support."
>
> 25 Stat. at Large, 895.

This is the fund called the "Sioux Trust Fund."

2.

Under a treaty between the United States for different tribes of Sioux Indians, dated April 29th, 1868 (15 Statute at Large, 635), these Indians made large cessions of land, and other rights, and in partial consideration therefor, the United States agreed with them as follows:

> "Article VII. In order to insure the civilization of the Indians entering into this treaty, the necessity of education is admitted, especially of those as are or may be settled on said agricultural reservations, and they, therefore, pledge themselves to compel their children, male and female, between the ages of six and sixteen years, to attend school, and it is hereby made the duty of the agent for said Indians to see that this stipulation is strictly complied with; and the United States agrees that for every thirty children between said ages who can be induced or compelled to attend school, a house shall be provided and a teacher competent to teach the elementary branches of our English education shall be furnished, who will reside among said Indians and faithfully discharge his or her duties as a teacher. This provision of this article to continue for not less than twenty years."

By the Act of Congress of February 28, 1877, Chapter 72 (19th Stat. at Large, 254-6), ratifying an agreement with bands of Sioux nation, in consideration of further land cessions, it was provided:

> "In consideration of the foregoing cession of territory and rights and upon full compliance with each and every obligation assumed by the said Indians, the United States does agree to provide all necessary aid to assist the said Indians in the work of civilization to furnish to them schools and instructions in mechanical and agricultural arts as provided by the treaty of 1868."

By the seventeenth section of the Act of 1889, Chapter 405 (25th Stat. at Large, 894), it was provided:

> "that the 7th article of the said treaty of April 29, 1868, securing to said Indians the benefit of education, subject to such modifications as Congress shall deem most effective to secure said Indians equivalent benefits of such education, shall continue in force for twenty years from and after the Act shall take effect."

Each year since the ratification of this treaty, there has been appropriated in the Indian Appropriation Act a sum of money to carry out this treaty stipulation, and from the year 1905, the annual appropriation to fulfill this treaty stipulation has been about $225,000. This is the "Sioux Treaty Fund" in dispute.

3.

The Catholic members of the Sioux nations desiring to have their share of these tribal funds applicable to educational purposes, used in their own Catholic schools, brought this matter to the attention of President Roosevelt in 1904 by the Bureau of Catholic Indian Missions, a corporation having charge of the missions among the Catholic Indians throughout the United States, and in 1905, President Roosevelt in an order sent to the Secretary of the Treasury decided that these Indians were entitled, as a matter of moral right, to have the moneys coming to their use in the education of their children in the schools of their choice, care being taken to see that any petition by the Indians was genuine, and that the money appropriated for any given school represented only the *pro rata* proportion to which the Indians making the petition were entitled. The President directed that this should be done, unless Congress should decree to the contrary, or the Courts should decide that the decision of the Department of Justice was erroneous. Accordingly, contracts were made with the Catholic

Indian Bureau for a number of Catholic schools with the Sioux Indians, the conditions prescribed by the President having been complied with, for the fiscal year ending June 30, 1905, amounting in all to $98,460. These contracts were renewed for the fiscal year ending June 30, 1906.

Some question having been raised as to the legality of these contracts, the President, by executive order dated December 23, 1905, addressed to the Commissioner of Indian Affairs, stated that the contracts could still be made as to the trust fund, but that a question had been raised as to the validity of contracts applying the money appropriated to the fulfillment of treaty stipulations, and inasmuch as it was legally uncertain as to whether the treaty funds could be used for these purposes, the President directed that the moneys for the current year should be paid, but that no new contracts were to be entered into for such payments after the close of the fiscal year of June 30, 1906, unless there was authorization by Congress, or some determination by the Courts. Under this order all the $98,460 was paid for the year 1906 except $27,000, which represented the contract with the Bureau of Catholic Indian Missions for the care, education and maintenance of two hundred and fifty Indian pupils at the St. Francis Mission School, Rosebud Reservation, South Dakota, at one hundred and eight dollars per capita per annum, amounting to twenty-seven thousand dollars.

4.

This was not paid because of the filing of a bill in equity in the Supreme Court of the District of Columbia by the appellants in this case, who alleged that the said contract was illegal and contrary to the Act of June 7, 1897, Section 1, 30th Stat. at Large, 62-79, which contains the following provision:

> "And it is hereby declared to be the settled policy of the Government to hereafter make no appropriation whatever for education in any sectarian school."

The bill asked for an injunction against the appellees to restrain them from paying, or authorizing the payment, of any moneys, either from the Sioux Treaty Fund or the Sioux Trust Fund, to the Bureau of Catholic Indian Missions for the support, education or maintenance of any Indian pupils in the St. Francis Mission School, or any other sectarian school. This bill was filed on the 11th of May, 1906, was duly answered and heard before Justice Ashby M. Gould, of the Supreme Court of the District of Columbia, who on the 15th day of April, 1907, decided that the contracts with reference to and payments from the Sioux Trust Fund were valid, but that the contracts with reference to and payments from the Sioux Treaty Fund were invalid. He, therefore, on that date granted an injunction against the appellees from making any contracts in reference to the Sioux Treaty Fund, or any payments therefrom.

This case was appealed from the decree of Mr. Justice Gould by the present appellees to the Court of Appeals of the District of Columbia on the 19th day of April, 1907, four days after the decree, and a cross-appeal was taken by the present appellants to that part of the decree deciding that payments from the trust fund were legal. A hearing was had before said Court on the 21st day of May, 1907, but the Court did not hand down its decision until November 29, 1907. By this decision of the Court of Appeals of the District of Columbia, they unanimously determined that the contracts were legal as to both funds, and they accordingly ordered that the decision of Justice Gould as to the trust fund be affirmed, and as to the treaty fund, be reversed, and the bill should be dismissed.

Shortly thereafter, the present appellants appealed to the Supreme Court of the United States from this decision of the Court of Appeals of the District of Columbia. The number of the case is 569, and the record is now being printed.

The following are the special and peculiar circumstances upon which the motion to advance is based :

*First.* By the unanimous decision of the Court of Appeals of the District of Columbia, these contracts between the Catholic Indian Bureau and the Commissioner of Indian Affairs, are held to be valid, and the Catholic Indians have a right to have applied to their own schools their proportion of both the trust and treaty funds.

*Secondly.* Although this decision has thus been rendered, the Government of the United States will not pay over the $27,000 due out of the appropriation for the fiscal year ending June 30, 1906, for the reason that the appeal to the Supreme Court of the United States renders the validity of such payments still a matter of doubt.

*Thirdly.* That under the executive order of the President of the United States hereinbefore referred to, no new contracts were to be permitted until the validity of the contracts were determined by the Courts, and the Indian Department is doubtful as to its right to enter into contracts, although the matter has been determined by the Appeal Court of the District of Columbia, because of the pending appeal to the Supreme Court of the United States. In consequence of this executive order, although services were rendered for the fiscal year ending June 30th, 1907, no contracts could be made and the Catholic Indian Bureau has lost nearly $100,000 by its inability to make these contracts for the reasons stated, although the Court of Appeals has decided that the money belongs to the Indians, and ought to be appropriated in accordance with their request.

Fourthly

3.

The question is now pending as to contracts for services that have been continuously rendered, and are now being

rendered in these schools for the fiscal year ending June 30, 1908. The President of the United States has directed the contracts to be made, but the fiscal officers of the Government do not feel justified in paying any money on them, although the services are being rendered, on account of the doubt of the decision of this appeal to the Supreme Court of the United States.

Fifthly

The result, therefore, may be that although the services are still being rendered, and although the Court of Appeals has unanimously determined the contracts valid, and although the bond on appeal could not legally cover the damage occasioned by the delay, these Indians may lose for another year the benefit of the application of their own moneys to the support of their own schools, unless the matter is speedily determined by the Supreme Court of the United States.

Sixthly

The fiscal officers of the government, in addition to these reasons, are very much embarrassed in their accounts and embarrassed by their uncertainty as to what to do in the premises with respect to these contracts, and with respect to payments of money thereunder. Under the decision of the Court of Appeals of the District of Columbia, the contracts are valid, and the money should be paid, but should the Supreme Court of the United States decide to the contrary, any payments now made would be illegal. They, therefore, desire to be relieved of this embarrassment by having the matter decided so that the moneys can be paid or not paid in accordance with the decision of the Supreme Court, a reasonable time before the expiration of the fiscal year ending June 30, 1908. These special circumstances have appealed not only to the officers of the Government of the United States, the present appellees, but also are fully

appreciated by the appellants, and the appellants fully concur in the application for an advancement, as is shown by the letter addressed by their counsel to the special counsel for the Government in these cases, which is printed herewith as a part of the appendix of this motion.

The appellants, therefore, respectfully request the Supreme Court of the United States to advance this case for hearing, so that it may be speedily heard and determined, at this term of Court, at a date sufficiently prior to the termination of the fiscal year ending June 30th, 1908, to enable the appropriate contracts to be made, which will justify the payment of the money out of these private funds.

There has been printed as an appendix to this motion, the decision of the Court of Appeals of the District of Columbia, which contains a full statement of the whole controversy.

Respectfully,

CHARLES J. BONAPARTE,
Attorney-General of the United States.

EDGAR H. GANS,
Special Counsel.

# APPENDIX No. 1.

CHARLES C. BINNEY
Attorney at Law
703 North American Building,
Philadelphia.

Telephones:
Bell—Filbert 36-12.
Keystone—Race 44-92 A.

23 January, 1908.

EDGAR H. GANS, Esq.,
Calvert Building,
Baltimore, Maryland,

My Dear Sir:

In reply to your statement by telephone that you proposed to file a motion in the Supreme Court of the United States to advance the case of Quick Bear et al. vs. Leupp, et al. (October term, 1907, No. 569) on the docket, and to set it down for a hearing during the present term, I desire to say that I cordially concur in such a motion. While the suit directly involves only one contract, its decision must necessarily settle the question of the legality of a number of other similar contracts, so that it is of great importance that such decision be rendered as early as possible. It is unfortunate that in such a case it was necessary to take an intermediate appeal before a hearing in the Court of last resort.

Yours very truly,

CHARLES C. BINNEY,
*Attorney for Reuben Quick Bear et al., Appellants.*

# APPENDIX No. 2.

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Reuben Quickbear, Ralph Eagle Feather and Charles Tackett, on behalf of themselves and all other members of the Sioux Tribe of Indians of the Rosebud Agency, S. D., Appellants

*vs.*

Francis E. Leupp, Commissioner of Indian Affairs, Ethan Allen Hitchcock, Secretary of the Interior, Leslie M. Shaw, Secretary of the Treasury, Charles H. Treat, Treasurer of the United States and Robert J. Tracewell, Comptroller of the Treasury.

No. 1786.

Francis E. Leupp, Commissioner of Indian Affairs, Ethan Allen Hitchcock, Secretary of the Interior, Leslie M. Shaw, Secretary of the Treasury, Charles H. Treat, Treasurer of the United States and Robert J. Tracewell, Comptroller of Treasury, Appellants

*vs.*

Reuben Quickbear, Ralph Eagle Feather and Charles Tackett, on behalf of themselves and all other members of the Sioux Tribe of Indians of the Rosebud Agency, S. D.

No. 1787.

APPEAL AND CROSS-APPEAL FROM A DECREE OF THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, ENJOINING THE APPLICATION OF A CERTAIN FUND, AND REFUSING TO ENJOIN THE APPLICATION OF ANOTHER FUND TO A CONTRACT FOR THE EDUCATION OF INDIANS.

For many years prior to 1905, the Government of the United States had made, with mission schools of various denominations, annual contracts for the education of Indian children.

Amongst these was a sectarian school maintained on the Rosebud Reservation by the Bureau of Catholic Indian Missions, a corporation of the State of Maryland.

In June, 1905, this Bureau advised the Commissioner of Indian Affairs that it was prepared to care for and to educate Indian pupils during the fiscal year 1906, and requested a renewal of its contract of the preceding year on the same terms and conditions; in March, 1906, 212 members of the Sioux tribe who desired that their children be educated in a Catholic School petitioned the respondents to that end, and particularly that the contract requested by the Bureau be entered into on their behalves; others of the tribe objected and protested; the Commissioner of Indian Affairs made a contract with the Bureau of Catholic Indian Missions for the care, maintenance, and education during the year 1906 of 250 Sioux pupils at St. Francis Mission School on the Rosebud Reservation at the cost of $27,000; the Secretary of the Interior approved the contract, and there were set apart for payment the sums of $24,000 from the "Sioux Treaty Fund," and $3,000 from the income of the "Sioux Trust Fund;" the complainants on behalf of themselves and of all the members of the Sioux Tribe instituted this suit, to enjoin the application of the money to the purpose proposed; the learned Justice of the Supreme Court of the District of Columbia, who heard the matter below, was of opinion that an injunction should go against the expenditure of the

$24,000 from the "Treaty Fund" and be denied as to the $3,000 from the "Trust Fund," and it was so decreed; both parties have appealed.

The complainants put forward that at the time of the contract the Secretary of the Interior had been deprived by certain legislative expressions (found for the most part in the annual Indian Appropriation Acts) of all power to make or to authorize a contract for the education of any Indian pupil in any sectarian school; and this is the question.

The necessary outcome of the case will evolve itself from an understanding of the nature and character of the "funds" involved and an analysis of the appropriation acts concerned, more readily than it can be made to appear from a discussion of the various arguments put forward by the respective parties.

*Sioux Treaty Fund.*

By the Sioux Treaty of 1868 (15 St. 635) the United States agreed that for a term of twenty years they would provide for every thirty children of the Sioux tribe, a house and a teacher competent to teach the elementary branches of an English education. In 1877 (19 St. 254–5) the United States further agreed to furnish to the Sioux "schools and instruction in mechanical and agricultural arts as provided by the treaty of 1868."

By the Act of March 2, 1889 (25 St. 894) that article of the treaty of 1868 which provided for schools and for education was continued in force for a second term of twenty years. In pursuance and discharge of the obligations created by this treaty, the Indian Appropriation Act of 1905 (33 St. 1084–85) appropriating for the fiscal year 1906 provided amongst other things

> "For subsistence of the Sioux, and for purposes of their civilization, as per agreement ratified by Act of

Congress, approved February twenty-eight, eighteen hundred and seventy-seven, seven hundred thousand dollars.

* * * * * *

"For support and maintenance of day and industrial schools, including erection and repairs of school buildings, in accordance with Article seven of the Treaty of April twenty-ninth, eighteen hundred and sixty-eight, which Article is continued in force for twenty years by Section seventeen of the Act of March second, eighteen hundred and eighty-nine, two hundred and twenty-five thousand dollars."

The fund thus set apart for fulfillment of treaty obligations is the "Sioux Treaty Fund," out of which the $24,000, *supra*, has been set apart. In this connection it is appproappriate to observe that of the tribal income applicable to education the proportion for application amongst the 212 petitioners was $33,550.35 (Record, page 28), a sum in excess of the $27,000 involved by the contract at bar.

*Sioux Trust Fund.*

In 1889 (25 St. 888-895) in consideration of the relinquishment of the Indian title to lands in Dakota and for other reasons, Congress provided "there shall be set apart, out of any money in the Treasury not otherwise appropriated, the sum of three millions of dollars, which said sum shall be deposited in the Treasury of the United States to the credit of the Sioux Nation of Indians as a permanent fund, the interest of which, at five per centum per annum shall be appropriated, under the direction of the Secretary of the Interior, to the use of the Indians, etc."

This is the "Sioux Trust Fund" out of the income of which the $3,000, *supra*, has been set apart.

With respect to each and both of these funds, it is to be observed that their creation by Congress has made public money Indian money; in one instance Congress has paid a treaty debt, in the other paid a debt for lands, and the like; the money has changed owners; what had been money of the public in the Treasury of the United States, is now money of the Indians in the Treasury. So that in its expenditure the Secretary of the Treasury is laying out money of the Sioux Tribe of Indians, not money to which the public has any longer even the most slender claim of title or proprietorship. This distinction is vital to the case; because if Congress has lain upon the Secretary a limitation or restriction concerning only the purposes to which money of the public may be applied, such a limitation cannot readily have application to money of the Indians.

Further, it is to be recognized that the United States, not satisfied that its moral duty of promoting the civilization and education of Indians was fully discharged, by according to them the mere benefits to which it was bound and obligated by the Sioux Treaty of 1868, at once set out upon a broader and more generous policy: that of expending in addition to what the treaty required it to expend, sums for the advancement of Indian education which it was not required by any law or any treaty to expend.

In 1870 (16 St. 335, 359) entirely aside from treaty obligations, was appropriated $100,000

> "For the support of Industrial and other schools among the Indian Tribes not otherwise provided for, to be expended under the direction of the Secretary of the Interior."

Appropriations of this nature have continued until the present, and contracts have been annually made by the Secretary with mission schools of various denominations, payable out of such gratuitous appropriations; so far as tribes

having treaty stipulations were concerned, annual contracts might be and have been paid in part out of "Treaty Funds;" but respecting education for non-treaty tribes, education under annual contracts and all other education must be paid for from the gratuitous appropriations, or not at all; there was no other money.

These gratuitous appropriations are in no wise a disposition of Indian funds for Indian education, but are clear devotions of public money to the cause of Indian education, gratis.

We propose now to point out that in each appropriation Act involved in the complainant's position, Congress has not only fulfilled in detail the several treaty obligations relating to education, but also has made a distinct and separate appropriation of the other natnre; an appropriation to which it was not obliged; that it need not have made; a gratuitous appropriation of public money to advance the cause of Indian education; and it seems to us that the outcome of the matter will then begin to appear clear.

It is agreed that prior to 1895 the Secretary's power to contract with sectarian schools for Indian education existed; but opposition to these contracts having developed, the Indian appropriation Act of 1894, provided:

> "That the expenditure of money appropriated for school purposes under this act, shall be at all times under the supervision and direction of the Commissioner of Indian Affairs and in all respects in conformity with such conditions, rules and regulations as to the conduct of and methods of instruction and expenditure of money as may, from time to time, be prescribed by him, subject to the approval of the Secretary of the Interior.
>
> "Provided, that the Secretary of the Interior is hereby directed to inquire into and investigate the propriety of discontinuing contract schools and whether, in his judgment, the same can be done without detriment to the

education of Indian children, and that he submit to Congress, at the next session, the result of such investigation, including an estimate of the annual cost, if any, of substituting Government schools for contract schools, together with such recommendations as he may deem proper."

The Secretary reported, recommending that contract schools "should be decreased at the rate of not less than twenty per cent. a year."

The Indian appropriation Act of 1895 (28 St. 888) deals with and provides for many subjects, under separate and appropriate headings. Upon page 879 appears the heading,

FULFILLING TREATY STIPULATIONS WITH, AND SUPPORT OF, INDIAN TRIBES,

and under that particular heading, amongst other items, is the following:

"For support and maintenance of day and industrial schools, including purchase, erection, and repairs of school buildings, in accordance with article seven of the treaty of April twenty-ninth, eighteen hundred and sixty-eight, which article is continued in force for twenty years by section seventeen of the Act of March second, eighteen hundred and eighty-nine, seventy-five thousand dollars."

Upon page 903, some thirty pages removed from the first, appears the distinct heading

"SUPPORT OF SCHOOLS"

and thereunder is found,

"For support of Indian day and industrial schools, and for other educational purposes, ——— one million one hundred and sixty-four thousand three hundred and fifty dollars, ———; *provided*, that the Secretary of the Interior shall make contracts, but only with present

contract schools, for the education of Indian pupils during the fiscal year ending June thirtieth, eighteen hundred and ninety-six, to an extent not exceeding eighty per centum of the amount so used for the fiscal year eighteen hundred and ninety-five, and the Government shall, as early as practicable, make provision for the education of Indian children in Government schools."

In the Indian Appropriation Act of 1896, under the heading "Fulfilling Treaty Stipulations with, and Support of, Indian Tribes" (29 St. 333-34) appear the items—

"For subsistence of the Sioux and for purposes of their civilization as per agreement—one million dollars," and

"For support and maintenance of day and industrial schools, including purchase, erection, and repairs of school buildings, in accordance with article seven of the treaty—twenty-five thousand dollars."

On page 345 agains appears the same distinct heading "Support of Schools," and under it—

"For support of Indian day and industrial schools, and for other educational purposes not hereinafter provided for—one million two hundred and thirty-five thousand dollars—And it is hereby declared to be the settled policy of the Government to hereafter make no appropriation whatever for education in any sectarian school;

"Provided, that the Secretary of the Interior may make contracts with contract schools apportioning as near as may be the amount so contracted for among schools of various denominations for the education of Indian pupils during fiscal year eighteen hundred and ninety-seven, but shall only make such contracts at places where non-sectarian schools cannot be provided

for such Indian children and to an amount not exceeding fifty per centum of the amount so used for the fiscal year eigteen hundred and ninety-five."

Following on pp. 333–4 are twenty-one distinct items specifically providing for as many non-secterian schools and one for a sectarian to an aggregate of $920,965.

The Appropriation Act of 1897 (30 St. 66, 79) presents the two distinct headings as in the Act of 1896; under "Fulfilling Treaty Stipulations" appear the items which are necessary to fulfillment including those for schools and education, and under "Support of Schools" appears—

> "For support of Indian day and industrial schools, and for other educational purposes not hereinafter provided for, * * * $1,200,000 * * * and it is hereby declared to be the settled policy of the Government to hereafter make no appropriation whatever for education in any sectarian school; provided, that the Secretary of the Interior may make contracts with contract schools apportioning as near as may be the amount so contracted for among schools of various denominations for the education of Indian pupils during the fiscal year eighteen hundred and ninety-eight, but shall only make such contracts at places where non-sectarian schools cannot be provided for such Indian children and to an amount not exceeding forty per centum of the amount so used for the fiscal year eighteen hundred and ninety-five * * *."

Thereafter, as in the Act of 1896, follow separate provisions for schools to the number of 25, including the one sectarian school, in the aggregate sum of $1,162,771.30. Let it be rembered that all appropriations under the heading "Support of Schools" are the gratuitous, as for convenience, we have before designated them.

The Act of 1898 (30 St.) carries, on page 575, the "Fulfilling Treaty Stipulations" heading, together with its items, and on page 587, "Support of Scools":

> "For support of Indian day and industrial schools, and for other educational purposes not hereinafter provided for—$1,000,000. Provided, that the Secretary of the Interior may make contracts with contract schools apportioning as near as may be the amount so contracted for among schools of various denominations for the education of Indian pupils during the fiscal year 1899, but shall only make such contracts at such places where non-sectarian schools cannot be provided for such Indian children, and to an amount not exceeding thirty per centum of the amount so used for the fiscal year eighteen hundred and ninety-five."

The appropriations for school buildings and for the support of particular schools were substantially the same as in the Act of 1896.

The Act of 1899 (30 St.) carries the two headings, the first on page 927, the second on page 942, as follows:

"SUPPORT OF SCHOOLS."

> "For support of Indian day and industrial schools, and for other educational purposes not hereinafter provided for, $1,100,000, provided that the Secretary of the Interior may make contracts with contract schools, apportioning as near as may be the amount so contracted for among schools of various denominations for the education of Indian pupils during the fiscal year 1900, but shall only make such contracts at places where non-sectarian schools cannot be provided for such Indian children, and to an amount not exceeding fifteen per cent. of the amount so used for the fiscal year eighteen hundred and ninety-five, the same to be divided proportionately among the said several contract

schools, this being the final appropriation for sectarian schools."

The Act of 1900 (31 St.), at pages 225 and 242, carries the same two distinct headings, the second

"SUPPORT OF SCHOOLS."

"For support of Indian day and industrial schools, and for other educational purposes not hereinafter provided for, $1,200,000,"

followed by the specific appropriations for particular schools, none of which is sectarian.

Such is the legislation upon which the position of the complainants depends. The respondents claim that the restrictions and limitations being found only in connection with the general item under the heading "Support of Schools," apply only to the gratuitous appropriation carried by that item, and not to items found under the distinct heading "Fulfilling Treaty Stipulations." While we have neither been pointed to, nor have we come upon anything in the books which reaches the particular question, yet all the reasons that seem forceful, draw our minds toward the latter contention.

As heretofore pointed out, the appropriations found under the heading "Support of Schools" are the gratuitous appropriations of public money; appropriations primarily devoted to the cause of Indian education; the items under the other heading are obligatory appropriations, primarily devoted to the payment of contractual obligations due the Indians, and only secondarily applied to education by him whom Congress has selected to dispense her trust.

While we, of course, recognize the continuing power of Congress to legislate concerning appropriations for Indians, yet in the absence of further legislation concerning the particular funds involved at bar, the situation may be paralleled

by conceiving an instance of the education of a cestui que trust through application by the trustee of a trust fund created for that purpose; once a trust fund be created and its use declared, the trustee is but the medium for its application in the particular manner; it is not his function to attach limitations or restrictions of his own; if he be so beneficent as to contribute of his own personal funds to the same end, this he may do under any limitations or conditions that please him; but it is not to be said that they attach also to the trust fund, nor is it likely for him to intend that they should; under the existing legislation the position of the United States with respect to the Indian "Funds" is practically that of a trustee; with respect to the gratuitous appropriations for "Support of Schools," that of a voluntary donor; so that it may be that a limitation can attach to the use of the gift money without attaching to the trust money.

This difference in the nature and character of the two funds was sufficient, not only to cause Congress to provide for them separately, although ultimately they were to be expended to the same end, education, but also to entitle them separately, differently, and distinctly; this consideration is significant and its significance must be recognized; it established that Congress regarded treaty obligations as distinct from school gratuities; if this be accurate, then it is likely that a restriction attached to the disposition of the gratuity, found only in juxtaposition with the very words creating the gratuity, was intended to apply only to the gratuity.

It is argued by the complainants that the provision

> "and it is hereby declared to be the settled policy of the Government to hereafter make no appropriation whatever for education in any sectarian school,"

found in the Acts of 1896 and 1897, is a distinct declaration of a Governmental policy which controls the action of the Secretary as thoroughly as would a direct legislative prohibition. If not impossible, it is at least difficult to accord

to this phraseology the effect of a declaration of permanent policy in view of the consideration that the so-called policy announced in one year is reversed the next, by directly appropriating for sectarian schools by expressly authorizing the Secretary to contract with them, and by specifically providing for at least one such, as the succeeding appropriation provides. Although the Act of 1896 declares it to be the "settled policy of the Government to hereafter make no appropriation whatever for education in any sectarian school," yet such appropriations were, nevertheless, made in 1897; and although the Act of 1897 declares a policy in identical language with that of 1896, yet the Act of 1898 again overrides by declaration by again appropriating for sectarian schools. If the declaration of 1896 was then intended as announcing a permanent policy to control the future, Congress in 1897 in its wisdom saw the necessity of departing from it, and wiped it out by appropriating in that year; and if the declaration of 1897 was currently intended as announcing a permanent policy for the future, it in turn was wiped out by appropriations in 1898; so that as the matter appears these declarations both stand nullified; and there remains nothing declarative of policy save in the Act of 1898 the expression, "this being the final appropriation for sectarian schools."

If these acts be all taken together it is perfectly manifest that Congress either intended in each year a permanent policy and deliberately and understandingly postponed it to the next, or what is more likely, that Congress never intended that the policy proclaimed should become operative or effective until after the appropriation of 1898. And by providing in 1896 in connection with the gratuitous appropriation that the Secretary might expend eighty per cent. of the sum spent in 1895, by providing in 1897 in connection with the gratuitous appropriation that he might expend fifty per cent. of that sum by providing in 1898, in connection with the

gratuitous appropriation, that he might expend forty per cent., in 1898 thirty per cent., in 1899 fifteen per cent., "this being the final appropriation for sectarian schools," thus gradually eliminating in connection with the gratuity what he was directly authorized to expend out of the gratuity, it seems equally manifest that Congress considered the limitation as reaching only to the gratuity.

But for the sake of the argument, let it be assumed that the language quoted does announce a definite, fixed and permanent policy; yet what manner of policy is it that is declared? Is it the policy of depriving a religious Indian of the liberty of educating his children in a school of his own sect, at the cost of his own money? Or is it the policy of declining to educate an Indian in religious schools gratuitously, at the cost of public donations, which are not his, and to which he has no claim as matter of right?

Well may it be said that as to national voluntary contributions out of the public funds to the cause of Indian education, the taxpayers of the United States, who are adherents to divers creeds and to none, may claim to be consulted. The injustice to people of one creed in having their money applied to the encouragement and strenghtening of schools which teach another creed, or in the farming out by the Government of its education of Indians to a particular sect, is manifest; and doubtless impressed Congress with a determination that whatever gratuitous education it afforded should not be in creeds, or paid for to this, that or the other sect, as such. But the philanthropy and sense of justice of the same taxpayer is sufficient to enable him ungrudgingly to accord to the Indian the same right and privilege of free choice of schools that he would accord to his neighbor, so long as the money which pays is no longer that of the taxpayer, but gotten to be that of the other.

The first amendment to the Constitution, by the clause, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof," has shackled the hands of legislation against aid or hindrance to creeds and faiths; so be it that they live and flourish, die or wither; they go untouched, unmoved, unstirred by law; against them it speaks not, nor in their favor; in their field each human creature stands unlawed—a sovereign, supreme—to turn which way he will; not only the white and black, but the red man as well; to prohibit an Indian from a particular faith, or from rearing his children in its school is as far outside the law as in the case of a Caucasion; and this is the result if Indian education in a sectarian school of his own choice paid for by his own money is to be prohibited and the right denied.

The "Treaty" and "Trust" moneys are the only moneys that the Indians can lay claim to as a matter of right; the only sums on which they are entitled to rely as theirs for education; and while these moneys are not delivered to them in hand, yet the money must not only be provided, but be expended for their benefit and in part for their education. It seems inconceivable that Congress shall have intended to prohibit them from receiving religious education at their own cost, if they desire it. Such an intent would be one to "prohibit the free exercise of religion" amongst the Indians, and such would be the effect of the construction for which the complainants contend.

We are therefore of the opinion that the so-called declaration of policy, the limitations and restrictions found in the various appropriation Acts under the title "Support of Schools," concern only moneys appropriated under that particular title; that is to say, the gratuitous appropriations of public money to the cause of Indian education, and have nothing to do with the expenditure of the Indian "Treaty Fund," nor with the proceeds of the Indian "Trust Fund."

All parties agree that between the two "Funds" there is no distinction so far as the effort of the complainants' bill is concerned, nor does any distinction occur to us in this regard; the result of the case will therefore be the same respecting each. The decree is affirmed in so far as it denied an injunction respecting the income of the Trust Fund; in so far as it enjoined the payment from the "Treaty Fund," it must be reversed, and the cause is remanded with directions to dismiss the bill at the cost of the complainants, and it is so ordered.